

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

77-6093

In The
United States Court of Appeals
For The Second Circuit

WINIFRED D. MORIO, Regional Director,
Region 2 of the National Labor Relations Board,
for and on behalf of the NATIONAL LABOR
RELATIONS BOARD,

Appellee,

-against-

LOCAL 456, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

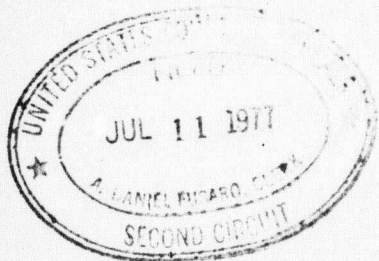
Appellant

*On Appeal from the United States District Court for the Southern
District of New York.*

JOINT APPENDIX AND EXHIBITS

JOHN R. HAROLD
Attorney for Appellant
160 South Central Avenue
Elmsford, New York 10523

JASPER C. BROWN, JR.
Attorney for Appellee,
NATIONAL LABOR RELATIONS BOARD
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1717 Pennsylvania Avenue N. W.
Washington, D. C. 20570
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Assistant General Counsel



PAGINATION AS IN ORIGINAL COPY

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PLAINTIFFS

DEFENDANTS CANNELLA, J

MARIO, WINIFRED D., Regional
Director Region 2 of the
National Labor Relations
Board, for and on behalf of
the NATIONAL LABOR RELATIONS
BOARD,

Petitioner

LOCAL 456, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

Respondent

29 U.S.C. Sec. 160(1), action to
enjoin recognition picketing.

CAUSE

ATTORNEYS

Joel P. Biblowitz
26 Federal Plaza Room 3614
New York, New York 10007
264-0300

John R. Harold
100 South Central Avenue
Elmsford, New York 10523
(914) 592-5220

BEST COPY AVAILABLE

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IF CASE WAS

DATE

MAY 5 1977

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71162

C.D. NUMBER

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JS 6

DATE	NR.	PROCEEDINGS	CANNELLA, J.
5-05-77	(1)	Filed complaint and issued ; summons.	
5-10-77	(2)	Filed Petitioner's Order to Show Cause for Preliminary Injunction on May 13th, 1977 at 10:30AM in Room 2704 and that if respondent filed an Answer same should be filed with Clerk of Court on or before 5:00PM on May 11th, 1977 etc. as indicated. CANNELLA, J.	
05-12-77	(3)	Filed Respondent's memorandum of law.	
05-12-77	(4)	Filed ANSWER of respondent to the petition .	(J)
05-12-77	(5)	Filed petitioner's memorandum of points and authorities in support of petition for injunction under Section 10(1) of the National Labor Relations Act, as amended.	
05-18-77	(6)	Filed petitioner's supplemental memorandum	
5-24-77	(7)	Filed Respondent's Post Preliminary Hearing Memorandum.	
5-27-77	(8)	Filed Decision-- for the reasons stated, the motion for a temporary injunction, etc. is hereby granted. Petitioner is hereby directed to submit judgment on notice within ten days. So ordered- CANNELLA, J. (m/n)	
06-07-77	(9)	Filed Order --granting temporary injunction. CANNELLA, J. (m/n)	
06-08-77	(10)	Filed respondent's notice of appeal to USCA from the opinion and order dated 6-6-77 and docketed on 6-8-77.. Copy mailed to: Edwin H. Bennett, Esq. Regional Atty., Region 2, National Labor Relations Board. Dtd. 6-8-77	
06-16-77	(11)	Filed stipulation between the parties designating exhibits for the record.	
06-16-77	(12)	Filed notice that the record on appeal has been certified and transmitted to the USCA this day.	
6-17-77	13	Filed Transcript of record of proceedings, dated 5/13/77	
6-17-77	14	Filed Transcript of record of proceedings, dated 5/31/77	
06-17-77	(15)	Filed notice that the 1st supplemental record on appeal has been certified and transmitted to the USCA this day.	

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WINIFRED D. MORIO, Regional Director
Region 2 of the National Labor Relations
Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

LOCAL 456, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Respondent

ORDER TO SHOW CAUSE
FOR PRELIMINARY INJUNCTION

The petition and affidavit of Winifred D. Morio, Regional Director, Region 2 of the National Labor Relations Board, having been filed pursuant to Section 10(1) of the National Labor Relations Act (61 Stat. 149; 73 Stat. 544; 29 U.S.C. Sec. 160(1)) praying for issuance of an order directing respondent to show cause why an injunction should not issue enjoining and restraining said respondent from engaging in certain acts and conduct in violation of said Act, pending the final disposition of the matters involved pending before said Board, and good cause appearing therefore,

IT IS ORDERED that respondent appear before this Court, at the United States Courthouse, Room 2704, Foley Square, New York, New York on the 13 day of May 1977 at 10:30 a.m., or as soon thereafter as counsel can be heard, and then and there show cause, if any there be why, pending the final disposition of the matters involved pending before the National Labor Relations Board, respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it or them should not be enjoined and restrained as prayed in said petition; and

IT FURTHER IS ORDERED that if respondent files an answer to the allegations of said petition, it shall file such answer with the Clerk of this Court, after service of a copy thereof upon petitioner at his office located at

Judge Cannella
77 Civil 2191

Federal Building, Room 3614, 26 Federal Plaza, New York, New York 10007, on or before 5:00 p.m. on the 11th day of May 1977; and

IT FURTHER IS ORDERED that personal service of a copy of this order, together with a copy of the petition, affidavits and exhibits upon which it is issued, shall be served on respondent and Construction City Corporation, the charging party before said Board, on or before the 9th day of May 1977 at 12 p.m. and service may be made by a representative designated by petitioner, in any manner provided in the Rules of Civil Procedure for the United States District Courts, and that proof of such service be filed herein; and

IT FURTHER IS ORDERED, good cause having been shown therefore, that memoranda in support of, and in opposition to, the within application may be served and filed by parties by 12 o'clock noon on the day before the time fixed upon the return of this application for the hearing thereon.

Dated at New York, New York, this 5 day of May 1977.

/s/

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WINIFRED D. MORIO, Regional Director
Region 2 of the National Labor Relations
Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

LOCAL 456, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Respondent

77 Civil

PETITION FOR INJUNCTION UNDER SECTION 10(1) OF
THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

To the Honorable, the Judges of the United States District Court
for the Southern District of New York;

Comes now Winifred D. Morio, Regional Director, Region 2 of the National Labor Relations Board (herein called the Board), and petitions this Court for and on behalf of the Board, pursuant to Section 10(1) of the National Labor Relations Act, as amended (61 Stat. 149; 73 Stat. 544; 29 U.S.C. Sec. 160 (1); herein called the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pending before the Board on a charge alleging that respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b)(7)(C) of the Act. In support thereof petitioner respectfully shows as follows:

1. Petitioner is Regional Director, Region 2, of the Board, an agency of the United States, and files this petition for and on behalf of the Board.
2. Jurisdiction of this Court is invoked pursuant to Section 10(1) of the Act.
3. Construction City Corporation filed a charge with the Board in Case No. 2-CP-577 on April 26, 1977, alleging that respondent, above-named labor organization, has engaged in and is engaging in, unfair labor practices within the meaning of Section 8(b)(7)(C) of the Act. A copy of the charge is attached hereto as Exhibit 1 and made a part hereof.

4. The aforesaid charge was referred to the Regional Director, Region 2 of the Board.

5. Upon the basis of the following, petitioner has reasonable cause to believe that said charge is true insofar as it alleges that respondent has violated Section 8(b)(7)(C) of the Act, and that a complaint of the Board based on said charge should issue against respondent pursuant to Section 10(b) of the Act. More particularly, petitioner has reasonable cause to believe, and believes, that respondent is a labor organization within the meaning of Sections 2(5), 8(b) and 10(1) of the Act, and that respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b)(7)(C) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:

(a) Respondent, Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is an unincorporated association and is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Respondent maintains its principal office at 160 South Central Avenue, Elmsford, New York 10523, and at all times material has been engaged within this judicial district in transacting business and in promoting and protecting the interests of its employee-members.

(c) Construction City Corporation, hereinafter referred to as CCC, with its main place of business located at 510 Fenimore Road, Hamaroneck, New York 10543, is a New York corporation engaged in the wholesale and retail sale of building and construction supplies. During the twelve-month period ending December 31, 1976 the gross revenue of CCC exceeded \$500,000 and during the same period, CCC purchased products valued in excess of \$50,000 delivered in interstate commerce to its New York facilities directly from firms located outside the State of New York.

(d) Respondent is not currently certified as the representative of any of the employees of CCC, and no petition has been filed under Section 9(c) of the Act to represent the employees of CCC.

(e) No charge has been filed with the Board under Section 8(a)(2) of the Act alleging that CCC unlawfully recognized or assisted any labor organization.

(f) Since on or about October 26, 1976, respondent has picketed, and caused to be picketed, CCC continuously on each and every work day at its premises located at 510 Fenimore Road, Mamaroneck, New York. The aforesaid picketing is continuing to date.

(g) At all times material herein, respondent used picket signs stating in pertinent part:

Protest sub-standard wage conditions
being paid on this job.

(h) On or about April 20, 1977, CCC, by Jerome J. Zaccaria, general manager, an agent of CCC, sent respondent a mailgram stating in pertinent part:

We have examined the Building Material
Yard's Agreement for the period July 1, 1976
to June 30, 1977 having revised our total
compensation plan we now meet and/or exceed
the area wage and fringe benefits standards.
Request that you discontinue picketing of
our premises immediately.

(i) On or about April 22, 1977, CCC, by Jerome J. Zaccaria, its agent, sent respondent a mailgram stating in pertinent part:

Notwithstanding our notification to you that
our Company is now paying area standards
your picketing of our premises and stoppage
of suppliers continues. We invite you to
visit our office Monday morning April 25
at 11 AM in order to allow us to verify our
claim.

(j) Despite the communications described above in subparagraphs (h) and (i), respondent continued the picketing described above in subparagraph (f) until May 4, 1977 without determining whether, in actuality, CCC's labor costs were substandard.

(k) On May 4, 1977, respondent, by John R. Harold, Esquire, and Otto Revellese, attorney and agent of respondent, respectively, met with representatives of CCC and stated, in substance, that respondent would not terminate the picketing, described above in subparagraph (f), until CCC provided its employees with the same benefits, in all respects, as are provided in the Building Material Yard's Agreement, referred to above. And, as stated above in subparagraph (f), this picketing is continuing to date.

(l) An object of respondent's picketing and conduct set forth above in subparagraphs (f), (g), (j) and (k) is to force or require CCC to recognize or bargain with respondent as the representative of its employees or to force or require CCC's employees to accept or select respondent as their collective-bargaining representative.

6. It may fairly be anticipated that, unless enjoined respondent will continue or repeat the acts and conduct set forth in paragraph 5, subparagraphs (f), (g), (j), (k) and (l) above, or similar or like acts and conduct, in violation of Section 8(b)(7)(C). It is therefore essential, appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(1) thereof, that, pending final disposition of the matters involved herein pending before the Board, respondent be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct, or repetitions thereof.

7. No previous application has been made for the relief requested herein.

WHEREFORE, petitioner prays:

1. That the Court issue an order directing respondent to appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining respondent, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it or them, pending the final disposition of the matters involved herein pending before the Board, from picketing or causing CCC to be picketed, where an object thereof is forcing or

requiring CCC to recognize or bargain with respondent, or any other labor organization, as the representative of its employees, or forcing or requiring employees of CCC to accept or select respondent, or any other labor organization, as the collective-bargaining representatives of its employees pursuant to the provisions of Section 9 of the Act. •

2. That upon return of said order to show cause, the Court issue an order enjoining and restraining respondent in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper.

Dated at New York, New York, this 5th day of May 1977.

/s/ Winifred D. Morio

Winifred D. Morio
Director, Region 2
National Labor Relations Board

JOHN S. IRVING,
General Counsel,

JOHN E. HIGGINS,
Deputy General Counsel,

HAROLD DATZ,
Associate General Counsel,

EDWIN H. BENNETT,
Regional Attorney, Region 2,

JOEL P. BIBLOWITZ, Attorney,

ROCHELLE KENTOV,
Attorney.

National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10007
264-0300

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

I. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name

Local 456, International Brotherhood of Teamsters.

b. Union representative to contact

Otto Reveleso

c. Phone No.

(914) 542

3500

d. Address (Street, city, State and ZIP code)

160 South Central Avenue, Elmsford, New York

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (7) (C) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)
Since on or about October 26, 1976, and continuously thereafter, the above-named labor organization, by its officers, agents, representatives, and members, has picketed or caused to be picketed Construction City Corporation at 510 Fenimore Road, Mamaroneck, New York, 10543, its premises, with an object of forcing or requiring Construction City Corporation to recognize or bargain with Local 456, International Brotherhood of Teamsters as the representative of its employees, and with an object of forcing or requiring the employees of Construction City Corporation to accept or select Local 456, International Brotherhood of Teamsters as their collective bargaining representative, notwithstanding that Local 456 is not currently certified as the representative of such employees, where such picketing has been conducted without a petition having been filed under Section 9(c) of the Act within a reasonable period of time from the commencement of such picketing. The above-named labor organization has refused offer by employer to examine its (employer's) compensation package.

3. Name of Employer

Construction City Corporation

4. Location of Plant involved (Street, city, State and ZIP code)

510 Fenimore Road, Mamaroneck, New York 10543 (914) 381-2251

5. Type of Establishment (Factory, mine, wholesaler, etc.)

Retail - Wholesale

6. Identify Principal Product or Service

Building Supplies

7. No. of Workers Employed

22

8. Full Name of Party Filing Charge

Construction City Corporation

9. Address of Party Filing Charge (Street, city, State and ZIP code)

510 Fenimore Road, Mamaroneck, New York 10543

10. Telephone No.
(914) 381-
2251

II. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By

(Signature of representative or person making charge)

Attorney

(Title or office, if any)

Alfred T. DeMaria, Esq., w. Thomas McDonough

Address

CLIFTON, BUDD, BURKE & DEMARIA
420 Lexington Avenue
New York, New York 10017

687-7410

(Telephone number)

April 26, 1977

(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

STATE OF NEW YORK)
) SS:
 COUNTY OF NEW YORK)

I, Winifred D. Morio, being first duly sworn, depose and say that I am the Regional Director, Region 2, of the National Labor Relations Board; that I have read the foregoing petition and know the contents thereof; that the statements therein made as upon personal knowledge are true and those made as upon information and belief I believe to be true. Further, Section 10(1) of the National Labor Relations Act provides that "petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed". In order to meet the requirements of said subsection, petitioner, rather than moving by notice of motion, requests the issuance of the order to show cause herein returnable at the earliest date possible.

Further, inasmuch as a hearing will be required on the petition, and because of the nature of these proceedings issue has not yet been joined, petitioner requests that any memoranda furnished by the parties shall be filed after the joinder of issue by service of an answer, by twelve o'clock on the day before the time to be fixed for a hearing.

/s/ Winifred D. Morio
 Winifred D. Morio

Subscribed and sworn to before me
 this 5th day of May 1977.

 Mary W. Taylor
 Notary Public State of New York
 Qualified in New York County
 No. 31-9296255
 Term expires March 30, 1978

A - 12

Petitioner,

- against -

Respondent.

77 Civil 2191

(2) That by letter dated December 27, 1976 the National Labor Relations Board, Region 2, advised Construction City Corporation that it would not issue a complaint and that the Union's purpose was in furtherance of its "object of maintaining standard area wage and working conditions" and not for the "object of obtaining initial recognition or organizing your employees". Such decision is annexed hereto as Exhibit 2 of this Answer.

(3) The employer appealed such decision to the National Labor Relations Board, which by letter dated March 4, 1977, denied such appeal. Such letter is annexed hereto as Exhibit 3 of this Answer.

(4) That by reason of such charge and decision and affirmance thereof such constitutes the law of the case and is in affirmance that the Respondent has been conducting an area standards picket line without seeking recognition or representation and is therefor a bar to the current Petition.

(5) That by letter dated November 28, 1976, annexed to this Answer as Exhibit 4, counsel for Respondent in respect to the substance of the above-entitled matter, advised the National Labor Relations Board that the Respondent had only the very limited intent of conducting an area standards picket line and that in no sense was it seeking to gain recognition or represent the employees. This same letter indicated that, as to a charge of interfering with deliveries, the Union did not so interfere, although in an "area standards" picket line, counsel advises such might be permissible, although it was not practiced.

(6) That the complaint in Paragraph 5 (g) thereof is incorrect in that it does not set forth the full nature of the picket signs placed in front of the premises by Respondent. Such signs read as follows:

"Local 456 protests substandard wages and conditions being paid on this job"

"Local 456 does not intend by this picket line to induce or encourage the employees of another employer to engage in a strike or concerted refusal to work"

(7) That as to the current instant charge, Petitioner never sought or requested any supportive data, affidavits, letters or other facts which would support the charge by Construction City Corporation that Respondent had the object of forcing or requiring recognition or forcing or requiring such Corporation's employees

to accept or select Local 456 as its collective bargaining representative.

(8) That Petitioner does not now nor ever did have any supportive affidavits, facts, letters or evidence to support the instant charge, as stated in the paragraph immediately above.

(9) That Petitioner did not request or require the Construction City Corporation to furnish it with any evidence of any unqualified offer of the employer to have the Respondent examine its compensation package.

(10) Petitioner never had and does not now have any evidence of any such unqualified request of the employer to the Respondent to examine its compensation package except that by letter dated May 2, 1977, a copy of which is annexed to this Answer as Exhibit 5, Construction City Corporation through its counsel did ask Respondent to inspect its books and that thereafter and immediately such conference was held on May 4, 1977.

(11) That at such conference the Construction City Corporation advised the Respondent that it had an economic package which encompassed, so it contended, a \$75.00 per week employee benefit into a fund authorized by "corporate resolution", controlled and managed by the corporation, for two of its three employees, and that the benefits to be derived from such payment were only a possible promised benefit to be enjoyed if and when any employee had service with the company for a minimum period of ten years.

(12) That Construction City Corporation at such conference declined and refused to give a copy of such "Plan" to the Respondent.

(13) That Respondent was advised by Construction City Corporation that the "Plan" was not a Taft-Hartley plan and that no IRS approval was obtained, nor did the company spokesman feel certain that IRS approval could be obtained.

(14) That Respondent advised the representatives of Construction City Corporation that such "inchoate" commitment being

revokable at the will of the employer, and not supported by any controlled trust instrument, authorized and approved, was but a theoretical promise of some future benefit and was in no sense a permanent economic commitment of the employer.

(15) That Respondent did not say, as alleged in Paragraph 5 (k) of the Petition, that the employer must provide all and the same benefits as in the Building Materials Contract agreement, but said that the supposed "pension" benefit package was not a part of an equivalent economic package at all, and that if the employer would commit itself to an equivalent economic package, in being, providing equivalent but not necessarily identical benefits, from a cost point of view, the picketing would cease.

(16) That Respondent was further advised that this supposed corporate resolution was adopted but three weeks prior to the conference, and that no such like economic commitment had existed prior to three weeks before such meeting. That, therefore, the economic cost to the employer up to three weeks ago and only by reason of this supposed "pension", the economic costs to the employer were substantially less than those required of employers signatory to the Building Materials Yards agreement.

(17) That by reason of the aforesaid, it cannot be disputed that the Respondent instituted a proper area standards picket line and that not even a scintilla of proof could be forthcoming, that the employer paid an equivalent economic package at least until three weeks prior to May 4, and that even from that date forward the question remains as to whether or not such an inchoate commitment could in any sense be construed as part of an economic package.

A 10

(18) That the so-called economic package was reviewed between the parties at this conference and employee indicated that one of its three employees received less than the going rate and that he may or may not be increased to the going rate in six or nine months as the judgment of management may dictate.

(19) Management further indicated that it did not have any overtime provisions in its contract but instead gave compensatory time and one-half. It also conceded that it had no welfare fund, welfare benefit coverages such as Blue Cross/Blue Shield, major medical or life insurance. It also conceded that it did not have the equivalent of any unemployment insurance fund, found in the industry agreement, called a supplemental unemployment benefit fund; that it did not have any severance fund clause; that it did not have any guarantee of 40 hours of employment; that it did not pay time and one-half as premium time on holidays; that it had eight holidays instead of eleven; that in the early years of employment up to first and second year the industry contract gave substantially better vacation benefits; and that in this respect and all other respects it was indicated that such employees had only been employed for a very short period of approximately one year; that the employer indicated that it had no death leave. There were many other points of differences, each of which would add up to a smaller "economic package" than paid by the industry employers.

(20) That it was in this sense that Respondent advised Construction City Corporation that it did not view the economic package as equivalent in total cost to the industry employer and that such benefits as mentioned above, or some of them, if liabilities directly payable by the company were made, so that the current economic commitment then to be given to the employees were economically equal to the Industry Package, that picketing would

be discontinued. As heretofore stated, the Respondent did not view a theoretical IRS unapproved corporate resolution committing, ten years down the road, the payout of whatever \$75.00 per week might purchase was properly to be construed as part of a "current economic commitment" and/or part of the "current economic package".

(21) That the charge in the instant case alleges that the Respondent refused an offer by the employer to examine its compensation package.

(22) That by Paragraph 5 (j) of such Petition, Petitioner alleges that picketing continued despite an offer by the employer for the Respondent to inspect its books.

(23) That the Petitioner knew or should have known, and on proper careful inquiry therefore learned, that Respondent never refused to inspect the books of the employer.

(24) That annexed hereto as Exhibit 6 is a letter dated April 26, 1977 forwarded to the attorney for the employer in which the Respondent explained the circumstances of the non-attendance at the scheduled meeting of April 25, 1977 which letter indicates that the employer did not want the Union to visit and check its books despite its charge and despite the Petitioner's support for such charge as stated in Paragraph 5 (j).

(25) That annexed hereto as Exhibit 7 is a letter dated April 28, 1977 from counsel to the employer to the Respondent in which the employer then advised that if the pickets would remain away, counsel in the next few days would arrange a meeting.

(26) That it is clear, therefore, that the employer, without any proper right, filed an incorrect charge alleging a refusal to meet and that the Petitioner supported its complaint in part on the basis of such a charge knowing that there was no refusal to meet.

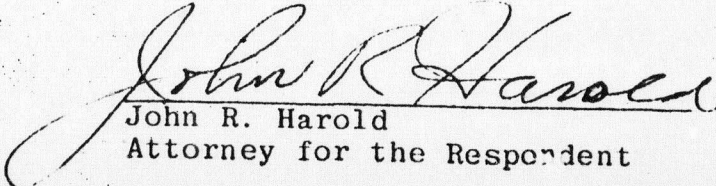
(27) That for the reasons aforesaid the National Labor Relations Board has previously found that the purpose and intent of the Respondent was to conduct wholly and exclusively an "area standards picket line" and did not and was not seeking recognition or representation; that as heretofore related the Respondent continued such proper picket line under the approved authority of the National Labor Relations Board in that it dismissed the earlier charges aforesaid.

(28) That supposedly and hypothetically the good faith of the Respondent was put in question by reason of a claimed refusal to meet with the employer to check its economic package whereas in fact and known to the employer and to the Petitioner, the Respondent had never refused to meet with the employer to check its economic package.

(29) That, at most, the very belated theoretical, problematical pension plan (?) was of recent institute and as heretofore related was not part of any immediate economic burden or commitment of the employer.

(30) That for reasons aforesaid that Petitioner did not have reasonable cause to believe that the charge as filed was true and in fact had reason to believe that the charge as filed, as repetitively illustrated above, was false, despite the predicate of the Petition as set forth by the Petitioner in the first unlettered paragraph of Paragraph 5 of the Petition.

(31) Wherefore, it is respectfully requested that the Petition for the grant of a Preliminary Injunction be declined.

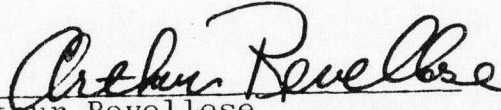

John R. Harold
Attorney for the Respondent

STATE OF NEW YORK)
) SS:
COUNTY OF WESTCHESTER)

I, Arthur Revellese, being duly sworn depose
and say:

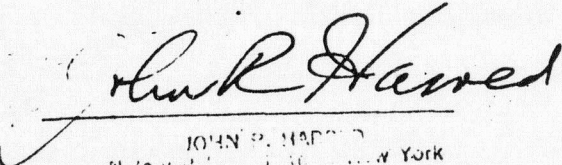
That I am the Secretary-Treasurer of the
International Brotherhood of Teamsters, Chauffeurs, Ware-
housemen and Helpers of America, Local 456, and I am its
principal officer.

That I have read the Answer and the Affirma-
tive Defense and affirm that the statements made as upon
my personal knowledge are true and that as to those re-
lated to me by my General Counsel or as records and Ex-
hibits of the NLRB, or as to letter Exhibits annexed to the
Defense , I believe them to be true.


Arthur Revellese
Secretary-Treasurer
International Brotherhood of
Teamsters, Chauffeurs, Ware-
housemen and Helpers of America

Sworn to be fore me this

11 day of May 1977



JOHN P. MADSON
Notary Public, State of New York
No. 4550730
Qualified in Westchester County,
Commission Expires March 30, 1978

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local or each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

2 CP-563

Date Filed

NOV 21 1976

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name

Local 456, International Brotherhood of Teamsters

b. Union Representative in Contact

Otto Revelase

c. Phone No.

(914) 592-9500

d. Address (Street, city, State and ZIP code)

160 South Central Avenue, Elmsford, New York

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) — (1)(C) — of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about October 26, 1976, and continuously thereafter, the above-named labor organization, by its officers, agents, representatives, and members, has picketed or caused to be picketed Construction City Corp. at 510 Fenimore Road, Mamaroneck, N.Y. 10543, its premises, with an object of forcing or requiring Construction City Corp. to recognize or bargain with Local 456, International Brotherhood of Teamsters as the representative of its employees, and with an object of forcing or requiring the employees of Construction City Corp. to accept or select Local 456, International Brotherhood of Teamsters as their collective bargaining representative, notwithstanding that Local 456 is not currently certified as the representative of such employees, where such picketing has been conducted without a petition having been filed under Section 9(c) of the Act within a reasonable period of time from the commencement of such picketing.

3. Name of Employer

Construction City Corp.

4. Phone No.

(914) 381-2251

5. Location of Plant Involved (Street, city, State and ZIP code)

510 Fenimore Road, Mamaroneck, New York 10543

6. Employer Representative in Contact

J. Zaccaria, Sr.

7. Type of Establishment (Factory, mine, wholesaler, etc.)

Retail - Wholesale

8. Identify Principal Product or Service

Building Supplies

9. No. of Workers Employed

22

10. Full Name of Party Filing Charge

Construction City Corp.

11. Address of Party Filing Charge (Street, city, State and ZIP code)

510 Fenimore Road, Mamaroneck, New York 10543

12. Telephone No.

(914) 381-2251

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By

Peter A. Tomback

Attorney

(Signature of representative or person making charge)

(Title or office, if any)

Peter A. Tomback

Address

51 East 42nd Street, N.Y., N.Y. 10017

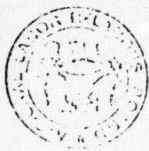
687-2142

(Telephone number)

November 17, 1976

(Date)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1601)

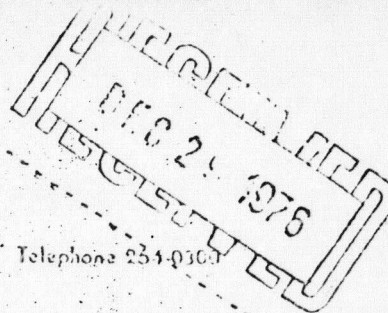


NATIONAL LABOR RELATIONS BOARD

REGION 2

Federal Building, Room 3614, 26 Federal Plaza

New York, New York 10007



Telephone 234-0300

December 27, 1976

Construction City Corp.
510 Portmore Road
Hempstead, New York 10543

Re: Local 456, IBT
(Construction City Corp.)
Case No: 2-CP-563

Dear Sirs:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

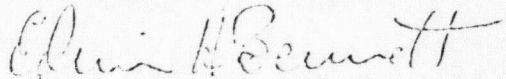
As a result of the investigation it does not appear that further proceedings on the charge are warranted.

The evidence does not tend to establish that the above-named Union violated Section 8(b)(7)(C) of the National Labor Relations Act, as alleged by you. Rather, it appears that the Union was engaged in picketing at your facilities in furtherance of its object of maintaining standard area wage and working conditions, and not for the object of either obtaining initial recognition or organizing your employees. In this connection it appears from the investigation that the Union was generally aware, prior to the commencement of its picketing, that the wages and working conditions of your employees do not, in fact, meet the standards prevailing in union shops in the area. In any event the evidence is insufficient to establish that an object of the Union's picketing of your premises is to obtain initial recognition or to organize your employees. That the picketing was successful in halting certain deliveries to your premises cannot in and of itself supply the necessary evidence of a proscribed recognition or organizational object. (United Brotherhood of Carpenters and Joiners of America, Local 480, AFL-CIO (National Mill Designs, Inc.), 209 NLRB 921). Further, the evidence adduced does not support your contention that an employee who expressed support for the Union following the commencement of the picketing was an agent of the Union, acting on its behalf to organize your employees. For all of the foregoing reasons, I am refusing to issue a complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel addressed to the Office of Appeals, National Labor Relations Board, Washington, D. C. 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D. C., by the close of business on January 10, 1977. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. Any request for extension of time must be submitted to the Office of Appeals in Washington, and a copy of any such request should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,


Edwin H. Bennett
Acting Regional Attorney

Enc.

REGISTERED MAIL
R.R.R.

cc: General Counsel
National Labor Relations Board
Washington, D. C. 20570

Clifton, Budd, Burke & DeMaria
420 Lexington Avenue
New York, New York

Local 456, IWT
160 South Central Avenue
Elmsford, New York 10523

Construction City Corp.
510 Eintaore Road
Manhasset, New York 10523

John R. Harold, Esq.
160 South Central Avenue
Elmsford, New York 10523

Tomback & Tomback
51 East 42nd Street
New York, New York 10017



A-23

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

March 4, 1977

EXHIBIT 3

Re: Construction City Corporation
Local 456, IET
Case Nos. 2-CC-1470
2-CC-1477
2-CP-563

W. Thomas McDonough, Esquire
Alfred T. DeMaria, Esquire
Clifton, Budd, Burke & DeMaria
420 Lexington Avenue
New York, New York 10017

Dear Mr. McDonough:

Your appeals in the above matters have been duly considered.

The appeals are denied substantially for the reasons set forth in the Regional Director's letters of December 23, 1976 and January 18, 1977, and the Acting Regional Director's letter of December 27, 1976. The evidence was insufficient to establish that the Union's picketing was for other than the lawful purpose of maintaining prevailing area standards in the industry. In this regard, additional investigation undertaken by the Region after receipt of the appeal in Case No. 2-CP-563 disclosed no evidence to support the contention that former employee Lizardy was associated with the Union. Moreover, the Union's appeals addressed solely to employees of suppliers at the primary sites did not form a basis for finding a recognitional intent. Cf. Interboro News Co., 90 NLRB 2135 (1949). See also Carpenters 480 (National Mill Designs, Inc.), 209 NLRB 921, 922-923 (1974). As to Case Nos. 2-CC-1470 and 2-CC-1477, insufficient basis existed for a finding that the Union was responsible for the temporary delays caused at R.W. Henry Co. and Weyerhaeuser Co. In this regard it was noted that both suppliers promptly took action to insure that pickups could be made and that the Union informed its members not to interfere with pickups at suppliers. Finally, insufficient basis existed for a finding that the appeals addressed to employees of suppliers to respect the

EXHIBIT 3

Re: Case No. 2-CC-1470
2-CC-1477
2-CP-563

- 2 -

picket lines established at the primary sites constituted unlawful secondary action. See Interboro News, supra; Teamsters Local No. 379 (Gerrity Co., Inc.), 211 NLRB 629,633 (1974).

Accordingly, further proceedings herein were deemed unwarranted.

Very truly yours,

John S. Irving
General Counsel

By Robert E. Allen
Robert E. Allen
Director, Office of Appeals

cc: Director, Region 2

Construction City Corp., 510 Fenimore Rd., Mamaroneck, New York 10543

Local 456, TEF, 160 South Central Avenue, Elmsford, New York 10523 Attn: Mr. Otto Revolisi

John R. Harold, Esquire, 160 South Central Avenue, Elmsford, New York 10523

R.W. Henry Co., 15 Clinton Street, Pleasantville, New York 10570 Attn: Mr. Rick Henry

Tomback & Tomback, 51 West 42nd Street, New York, New York 10017

John R. Harold

COUNSELOR AT LAW

1 HAWTHORNE ROAD

BRONXVILLE, N.Y. 10708

914-961-6605

EXHIBIT 4

ANDREW V. GALWAY
BRIAN M. LUCYK
JEFFREY R. SALANT

ROBERT J. O'NEIL

NEW YORK OFFICE
ROOM 302
150 BROADWAY

212-962-1500

160 S. Central Avenue
Elmsford, New York 10523

RESPOND TO OFFICE INDICATED

☐ NEW YORK CITY
☐ BRONXVILLE
☒ ELMSFORD

November 28, 1976

National Labor Relations Board
Region 2, Federal Building
26 Federal Plaza
New York, New York

Attention: Mr. Chalet

Re: ~~Construction City~~ -- Local 456 IBT
2CP563; 2CC1470

Dear Mr. Chalet:

I regret that for over a week you and I have been trying to talk to each other over the telephone. Apparently the direct dialing system has a vice as well as a virtue. In any event, you should be complimented because my inability to speak with you is proof that you are spending our taxpayers' money as a government employee very efficiently.

As to your charge 2CP563, I write this letter as counsel to the Teamsters Union Local 456 to advise that the picket line at Construction City was established after a considerable amount of study of the law by me in order that we could with absolute legality conduct an "area standards" picket line. All officers of the Union were specifically instructed as to the rights and limitations of such kind of a picket line. Everyone specifically understood what it was and could not be an effort to organize the employees of Construction City Corporation.

Please be advised that I have investigated whether or not our clear understanding and instructions have been violated in this respect and I can inform you, in full good faith, that it was not the intention of the Union to organize Construction City

EXHIBIT 4

employees. no officers of the Union have endeavored to organize the employees of the company, and it is not now the intention of the Union to organize such employees.

This office would be quite willing to meet with you and discuss any fact situation which is contrary to our statement so that the truth thereof can be verified and, if through error some person other than an officer sought to organize these employees or the employer purposely sought to entrap one, the Union can meet this issue head on.

As to your charge 2001470, please be also advised that no officer of the Union, or any member of the Union for that matter, has encouraged individuals employed by any employer or other such employees to refuse in the course of their employment to do any of the acts claimed to be improper.

So also, no officer or member of the Union has threatened, coerced or restrained any employer to do the acts suggested to have occurred.

As I understand the law, an employer may elect not to deliver his wears to Construction City and his action in that matter would not constitute an unfair labor practice as against the Union.

Again, if you have any factual proof to the contrary in respect to this charge, please let us know by whom, which acts, and where such acts were committed

The Union cannot be an absolute guarantor that at no time under any circumstances any overzealous member may have done any of the acts complained of, but such was never performed at the direction, instigation or encouragement of the Union or its officers.

If your office will alert us to any such claimed incidences, the Union will take affirmative action to see that, if the acts complained of were committed through inadvertence, they are discontinued.

Very truly yours,

John R. Harold

CC: Mr. Otto Revellse ✓

CLIFTON BUDD BURKE & DEMARIA

420 LEXINGTON AVENUE

EXHIBIT 5

212-687-7410

THOMAS A. BRENNAN, SR.
COUNSEL

NEW YORK, N.Y. 10017

May 2, 1977

J.R.H.
Corporation

Mr. Arthur Revellese
Local 456, IBT
160 South Central Avenue
Elmsford, New York 10523

Re: Construction City Corporation

Dear Mr. Revellese:

I have today left a message with Mr. John Harold that we hereby invite you to examine the compensation package of Construction City Corporation.

This examination would take place at our law offices at the above address on Wednesday or Thursday of this week. I am waiting for a reply from Mr. Harold as to the exact time.

Please feel free to call me to make any further arrangements.

Sincerely,



W. Thomas McDonough

WTMJr/mem



TEAMSTERS AND CHAUFFEURS LOCAL

AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
HEADQUARTERS

150 So. Central Avenue • Elmsford, New York 10523

TeL (914) LYnc 2-9506/1/2 • (914) ROY-5571/73

LOUIS J. SANSONE
PRESIDENT
And Business Agent

EDWARD DOYLE
VICE PRESIDENT
And Business Agent

ARTHUR REVELLESE
SECRETARY THE ASSURED
And Business Manager

BERNARD E. DOYLE
RECORDING SECRETARY
And Business Agent

Const. City

RECEIVED APR 26 1977

Honorary Presidents
John Acropolis
Edward Doyle
Honorary
Secretary-Treasurer
Pete Calabrese

519

File

April 26, 1977

Mr. W. Thomas McDonough, Esq.
Clifton, Budd, Burke & DeMira
420 Lexington Ave.
New York, New York 10017

Dear Mr. McDonough:

Regret to advise you that we did not receive your mailgram concerning request to visit your office morning of April 25th. at 11:00 A.M. until 11:00 A.M. mail on Monday. As you know, our counsel, Mr. John R. Harold, has called you and explained the circumstances and offered the willingness of the Teamsters Union to attend your offer and verify whether or not you do pay area standards. Mr. Harold further advises that you told him that because somebody made a bomb threat to the company, you did not want the Union to visit you at this time, but would be in touch with Mr. Harold later.

Please be advised that we hold ourselves in readiness to attend at your earliest convenience. Please schedule an appointment through my secretary, Dottie Carroll.

Our attorney has advised me that he very precisely stated that our Union had nothing to do with any bomb threat, directly or indirectly, and did strongly oppose any such action as well as other illegal action, and will join with your and or the police in cooperating in any investigation of such claim of a bomb threat, and you may so advise the police.

Our Union has consistently, in many strike situations, specifically directed our membership to absolutely restrain from any acts of violence, intimidations or threats of any kind.

EXHIBIT 6

Mr. W. Thomas McDonough, Esq.

Page 2

We await your advice as to any more detailed knowledge you may care to give us concerning the who, what and when of such claimed bomb threat.

Very truly yours,

Arthur Revellise

Arthur Revellise,
Secretary-Treasurer
LOCAL UNION NO. 456

AR:dc

cc: Mr. John R. Harold, Esq. ✓

CLIFTON BUDD BURKE & DEMARIA

420 LEXINGTON AVENUE

212 687 7410

THOMAS A. BRENNAN, SR.
COUNSEL

NEW YORK N.Y. 10017

April 28, 1977

Mr. Arthur Revellese
Secretary-Treasurer
Local 456, IBT
160 South Central Avenue
Elmsford, New York 10523

Re: Construction City Corporation

Dear Mr. Revellese:

I have received your letter dated April 26. I have left a phone message this morning for you and the same message for Mr. Harold.

If your pickets continue to remain away from Construction City in Rumoroneck, I will, within the next several days, arrange a meeting concerning Area Standard and Construction City compensation package.

Yours truly,

W. Thomas McDonough, Jr.
W. Thomas McDonough, Jr.

WTHJr/mem

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

WINIFRED D. MORIO, Regional Director,
Region 2 of the National Labor Relations
Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD

DECISION

Petitioner,

77 Civ. 2191
(JMC)

-against-

LOCAL 456, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Respondent.

-----X

CANNELLA, D.J.:

Motion for a temporary injunction pursuant to
Section 10(1) of the National Labor Relations Act (the
"Act"), 29 U.S.C. § 160(1), is hereby granted.

The instant application is based upon petitioner's
conclusion that there is reasonable cause to believe that
respondent is engaging in an unfair labor practice within
the meaning of § 8(b)(7) of the Act, 29 U.S.C. § 158(b)(7).
Having reached that conclusion, the Regional Director is
under a statutory obligation to petition the Court to enjoin
respondent's wrongful activities. See 29 U.S.C. § 160(1).^{1/}
The Court must issue the injunction if it finds that the

National Labor Relations Board ("NLRB" or the "Board") "has come forward with evidence sufficient to spell out a likelihood of violation." *Douds v. Milk Drivers Union Local 584*, 248 F.2d 534, 537 (2d Cir. 1957); accord, *Danielson v. Joint Bd. of Coat, Suit & Allied Garment Workers' Union*, 494 F.2d 1230 (2d Cir. 1974). In this case petitioner claims that respondents have been engaging in prohibited "recognitional" picketing,^{2/} which constitutes an unfair labor practice under § 8(b)(7) of the Act. Because the Court finds that the Board has reasonable cause to believe that the union, by its activities, is committing an unfair labor practice, the injunction hereby issues.

Respondent began picketing the employer, Construction City Corporation ("CCC"), On October 26, 1976, with signs reflecting a protest of sub-standard wage conditions. CCC, having notice of the union grievance, evaluated the union contract to see if its employees were getting an economic equivalent.^{3/} Subsequent to making this comparison, CCC increased its employee's wages to exceed union wages and set up a welfare fund into which CCC would contribute \$75/week for each qualifying employee. Jerome J. Zaccaria, vice president and general manager of CCC, sent a mailgram to respondent, apprising the union that CCC now met the

area wage and fringe benefit standards and requesting the union to discontinue picketing. The picketing, however, did not stop and continues to this date.

On May 4, 1977 representatives of CCC met with respondent's attorney and agent. It is the substance of that meeting that leads the Board to believe that the avowed purpose of the union's picketing--to obtain area standards for CCC's employees--is a sham, and that the real object of respondent's activities is recognition.

CCC's counsel began this meeting by asking respondent's representatives to compare the wages paid by CCC to the union wages. He then attempted a comparison of the cost items in the union contract to CCC's expenditures for its employees and specifically described the corporate pension and welfare plan. Although respondent's attorney, John R. Harold, Esq., and a union representative both insisted that the union was not looking for recognition, the attorney asserted that, if CCC did not meet the union contract term for term, it was not meeting area standards. After some additional discussion respondents asked for a break. When the meeting resumed, Mr. Harold again expressed his belief that CCC was not paying area standards because all the terms of the contract were not being met. Items specifically mentioned at this time by the union representative were seniority, job security and layoff programs.

When asked by the attorney for CCC what he viewed as "area standards," Harold pointed to the union contract.

Although a union has the right to picket an employer to meet the prevailing area standards, Retail Clerks Int'l Assoc., Local Union No. 899, 166 N.L.R.B. 818 (1967), the Board is not bound by the union's label. In determining the actual purposes of the picketing, the Board may "scrutinize the conduct of a union . . . to determine if its efforts [are] limited to seeking compliance with area standards, or if it appear[s] that the union [is] using such announced objective as a pretext to disguise an object of obtaining recognition and an agreement." Retail Clerks, supra at 822; see, e.g., San Francisco Local Joint Exec. Bd. of Culinary Workers v. NLRB, 501 F.2d 794, 799-800 (D.C. Cir. 1974).

Petitioners herein claim that respondents are actually picketing for recognition, based upon Mr. Harold's indication at the May 4 meeting that, unless CCC met each and every term of the union contract, CCC would not be meeting area standards and, ergo, the picketing would continue. Although other inferences might be drawn from the testimony concerning the May 4 meeting, the Board's choice of the one most favorable to the employer should be upheld by a district court ruling on a case in this posture.

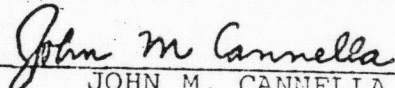
Danielson, supra, 494 F.2d at 1245.

Labor unions are permitted to engage in area standards picketing so that they may prevent the unorganized employer from gaining a competitive edge over the organized employer through lower costs of employment. Under this rationale a union is justified in picketing for equal wages or an equivalent cost package, "but when it undertakes to go beyond this and to dictate what benefits are to be granted, it is attempting to engage in pro tanto bargaining to gain benefits for employees which it does not claim to represent." Retail Clerks, supra, 166 N.L.R.B. at 823-24; accord, Local Union No. 492, United Brotherhood of Carpenters & Joiners, 215 N.L.R.B. 263, 267 (1974). In that CCC, on the whole, meets or exceeds all the cost items in the union contract, Harold's insistence that the union contract be met point by point indicates that the dispute has surpassed the scope of area standards and has trespassed into the realm of collective bargaining.

Accordingly, the Court finds that the Board has reasonable cause to believe respondent is committing an unfair labor practice and hereby enjoins the respondent from picketing the premises of CCC pending the NLRB's final disposition of the matter.

Petitioner is hereby directed to submit
judgment on notice within ten days.

SO ORDERED.



JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
May 26, 1977.

FOOTNOTES

- 1/ The section reads in pertinent part:

Whenever it is charged that any person has engaged in an unfair labor practice . . . , the preliminary investigation of such charge shall be made forthwith If, after such investigation, the office or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition [a] United States district court . . . for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law

- 2/ The term is really self-explanatory. Unless certain conditions are met, a union may not picket for the purpose of

forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative

29 U.S.C. § 158(b)(7). There is no dispute that the union has not met these conditions.

- 3/ Nothing in § 8(b)(7) of the Act prohibits a union from picketing a non-union employer with the sole object of forcing the employer to give its employees the same wages and other cost benefits as similarly situated union employees receive under the prevailing union contract in the area.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WINIFRED D. MORIO, Regional Director, Region 2
of the National Labor Relations Board, for and
on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent.

Judge Cannella
77 Civil 2191

ORDER GRANTING TEMPORARY INJUNCTION

This cause came on to be heard upon the verified petition of Winifred D. Morio, Regional Director of Region 2 of the National Labor Relations Board, for and on behalf of said Board, for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended, pending the final disposition of the matters involved pending before said Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings, evidence, briefs, argument of counsel, and the entire record in the case, has made and filed its findings of fact and conclusions of law in a Decision filed herein, finding and concluding that there is reasonable cause to believe that respondent has engaged in acts and conduct in violation of Section 8(b)(7)(C) of said Act, affecting commerce within the meaning of Section 2(6) and (7) of said Act, and that such acts and conduct will likely be repeated or continued unless enjoined.

Now, therefore, upon the entire record, it is

ORDERED, ADJUDGED AND DECREED that, based upon the Decision of this Court dated May 26, 1977, and pending the final disposition of the matters involved pending before the National Labor Relations Board, respondent, Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it or them, be, and they hereby are, enjoined and restrained from picketing or causing Construction City Corporation to be picketed, except as permitted by ~~state~~ law *Jmc*

Done at New York, New York, this 6th day of June, 1977.

John M. Cannella
United States District Judge

Filed

U S District Court

Jun 8 3 19 P.M. 7

SD of N.Y

fee pd 500

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
 WINIFRED D. MORIO, Regional Director,
 Region 2 of the National Labor Relations
 Board, for and on behalf of the NATIONAL
 LABOR RELATIONS BOARD,
 :

Petitioner - Appellees
 :

- against -
 :

LOCAL 456, INTERNATIONAL BROTHERHOOD OF
 TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
 HELPERS OF AMERICA,
 :

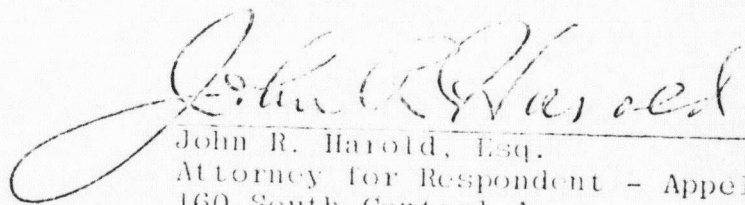
Respondent - Appellant
 :
 -----X

NOTICE OF APPEAL

77 Civil 2191 JMC

NOTICE IS HEREBY GIVEN that Respondent, Local 456,
 International Brotherhood of Teamsters, Chauffeurs, Warehousemen
 and Helpers of America, hereby appeals to the United States
 Court of Appeals for the Second Circuit from the opinion and
 the order of United States District Judge entered thereon,
 dated June 6, 1977, and docketed on the 8th day of June, 1977,
 and from each and every part thereof.

Dated: June 8, 1977



John R. Harold, Esq.
 Attorney for Respondent - Appellant
 160 South Central Avenue
 Elmsford, New York 10523

TO:

Edwin H. Bennett, Esq.
 Regional Attorney, Region 2
 National Labor Relations Board
 26 Federal Plaza - Room 3614
 New York, New York 10007

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 WINIFRED D. MORIO, et al., :
5 -against- : 77 Civ. 2191 (JMC)
6 LOCAL 456, INTERNATIONAL :
7 BROTHERHOOD OF TEAMSTERS, et al., :
8 Defendants. :
9 -----x

10
11 New York, New York
12 May 13, 1977 - 10:30 a.m.

13
14 BEFORE: HON. JOHN M. CANNELLA,

15 District Judge

16
17 APPEARANCES:

18 JOEL P. BIBLOWITZ, ESQ.,
19 Attorney for National Labor
Relations Board

20 JOHN R. HAROLD, ESQ.,
Attorney for Defendant

21 ALSO PRESENT:

22 ARTHUR REVELLESE
23
24
25

THE CLERK: Both sides are ready, your Honor.

THE COURT: You may proceed.

MR. BIBLOWITZ: Your Honor, I believe a brief opening statement might be helpful in this matter.

THE COURT: I think I am aware of it. There are some pickets with signs stating that the wages are substandard. The National Labor Relations Board said it is a subterfuge to effect the collective bargaining arrangements rather than that purpose. That is what is generally involved.

MR. BIBLOWITZ: Yes, your Honor.

Since the time that the petition and order to show cause has issued a further investigation has made one minor change. If you will notice, in paragraph 5-I of the petition we set forth a telegram being sent to the union requesting a meeting. The next paragraph, 5-J, states that despite this telegram the union continued to picket.

Since that time the petitioner has really determined that there was insufficient evidence to establish that that alone was proof of the union's real object of recognition. The evidence is a meeting that took place on May 4th. We will not bring out any evidence with regard to the week and a half delay.

MR. HAROLD: I do believe that the reasonable cause to believe test should be applied to the petition as it

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2 was filed supported by the charge which gave birth to it.

3 For the NLRB to come in and take second guesses
4 is not to be allowed.

5 THE COURT: Even though a petition contains an
6 error in it they are supposed to persist in the error?

7 MR. HAROLD: If the predicate of the petition
8 was grounded on a faithfully defective charge --

9 THE COURT: They would withdraw it. They seem to
10 think they have other areas in the petition which are suffi-
11 cient to grant the relief. What sense does your statement
12 make?

13 MR. HAROLD: Only that it tests that they had
14 reasonable cause to believe.

15 THE COURT: If it doesn't exist in the case then
16 the petition is out.

17 MR. HAROLD: I have great admiration for the
18 federal court for its expedition. I am troubled and will
19 cure any defects even it is my adversary's, that I am
20 confronted with a petition and confronted with a memorandum
21 of law, confronted with additional memorandum of facts --

22 THE COURT: You will have all the time to answer
23 that. I came in when Clark was still here. We don't have
24 antediluvian pleadings. I will allow each party to put in
25 everything they think is necessary.

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2 In one case involving a union, such as yourself,
3 I stayed here from Thursday afternoon to Sunday night at 11
4 o'clock. I will do the same thing here. I told you off the
5 record and I tell you on the record, I have a jury coming in
6 at 11:30. It has nothing to do with my expeditious manner or
7 conduct. It will go on until you are satisfied that you have
8 everything before the Court.

9 MR. HAROLD: The equity will weigh against them
10 seeking the temporary injunction as I hope to persuade the
11 Court.

12 MR. BIBLOWITZ: I call Jerome Zaccaria as a
13 witness.

14 MR. HAROLD: May in intrude, but briefly..

15 Does your Honor appreciate that the NLRB in this
16 case as supported by our affirmative answer already had pre-
17 viously determined that there was an area standard picket
18 line and found and determined that on appeal sustained a re-
19 fusal to issue a complaint that we were running anything
20 but an area picket line which I claim is the law in this
21 case.

22 THE COURT: Is that in your paper?

23 MR. HAROLD: Yes, sir.

24 THE COURT: Then I know about it.
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2 J E R O M E Z A C C A R I A, called as a
3 witness on behalf of the National Labor Relations
4 Board, having first been duly sworn, testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. BIBLOWITZ:

8 Q Your address?

9 A 486 Rosedale Avenue, White Plains, New York.

10 Q Are you associated with Construction City
11 Corporation?

12 A Yes, I am.

13 Q In what capacity?

14 A I am vice president and general manager.

15 Q When did you first become aware that Local 456
16 had a dispute with you of some kind?

17 A Some time at the end of October of 1976.

18 Q What occurred at that time?

19 A I arrived at my office one morning and I found
20 that there were several pickets outside of our premises.

21 Q Is this picketing still going on?

22 A Yes.

23 Q How often are the pickets present?

24 A They are there five days a week. On occasion
25 when we are open on a Saturday they are there on Saturday.

2 Q Are you still open on Saturdays?

3 A No, we are not.

4 Q What did the picket signs say and what do they
5 say now?

6 A One sign claimed that we were not paying area
7 standard wages and the second sign said it was not the intent
8 of the picketing to stop any trucking from entering into the
9 premises or to induce any of the workers to stop work.

10 Q Are both signs used all the time?

11 A Yes. When a truck passes in they take one sign
12 down. The man picketing goes to talk to the driver and tells
13 him not to enter.

14 Q Which sign?

15 A That they are not there to stop deliveries.

16 Q Are these signs being used by the union?

17 A Yes.

18 Q What did you do about the picketing situation?

19 A We had no notice from the union. They did not
20 advise us that we were not paying area standard wages. If
21 they did we would have sat down and met the wages. We had
22 no notification. I called my attorney Peter Tomback and we ha
23 a three-way conversation with Mr. Harold. We were advised at
24 that time with Mr. Harold in conversation, that they were
25 picketing us because of area standard.

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Zaccaria-direct

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2 THE COURT: Are you aware that you could be a
3 witness in this case?

4 MR. HAROLD: I am.

5 THE COURT: What are you doing here representing
6 this union? Under the Code you should not be trying this case.

7 MR. HAROLD: I didn't intend to be a witness
8 since I have another witness.

9 THE COURT: Here is a situation where you know
10 he is talking to you personally. There was somebody else
11 present at that time.

12 MR. HAROLD: No, sir. I don't need to refute
13 that because I believe we will get to the gut of that
14 situation.

15 THE COURT: It seems to me in a situation where
16 you could be a witness and I don't know at this time how I
17 could make a judgment whether or not your credibility is in
18 issue here, it is a little perplexing to me. We will continue
19 on on the representation you make. It seems to me I would
20 think twice before I would do it myself.

21 MR. HAROLD: I do not intend to violate what I
22 understand to be the code of ethics.

23 BY MR. BIBLOWITZ:

24 Q After this telephone conversation, what did you
25 do?

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Zaccaria-direct

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2 A I told Mr. Harold if we were not paying wages
3 we would like to do something about it. I wanted to get the
4 picketing out of there.

5 He said "If you meet wages, we will take one sign
6 down and put another sign up."

7 Q What did you do?

8 A I turned the situation over to my attorney, Peter
9 Tomback. It was the first time I was involved in a labor
10 dispute. I have been in business for 27 years.

11 He proceeded to go down to the NLRB and register
12 a complaint.

13 MR. BIBLOWITZ: We will stipulate as stated
14 before that that was dismissed for insufficient evidence.

15 MR. HAROLD: Would you further stipulate that the
16 identical language, except for the refusal to meet is the
17 identical charge that is found in the instant case verbatim?

18 MR. BIBLOWITZ: I can't really say that is the
19 exact language. I can certainly say --

20 MR. HAROLD: They are both in front of the Court.
21 It was an AP7C. It was dismissed for insufficient evidence.
22 Whether the exact language was the same, I really can't say.

23 THE COURT: That will be evident when I look at
24 it.

25 Q After that unfair labor practice charge was

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2 dismissed, what did you do at that point?

3 A We tried to evaluate what the union contract was
4 worth. We also came to the conclusion that our law firm of
5 Tomback & Tomback, which is our corporate counsel, is not
6 qualified to pursue the matter. We employed the services of
7 the present law firm which specializes in labor relations.

8 Q Did you make any changes in your wages or terms
9 of conditions in labor?

10 A Yes.

11 We would increase the wages of our employees to
12 meet the union wages and exceed them.

13 MR. HAROLD: May I ask that the time be given,
14 sir?

15 THE COURT: When did you do that?

16 THE WITNESS: We did that the first week of March
17 of this year.

18 (Petitioner's Exhibit 1 was marked for
19 identification.)

20 Q Prior to today, did I ask you to prepare a
21 summary of the changes that you made regarding your employees'
22 wages and other terms and conditions of employment to assist
23 this Court?

24 A No, you did not.

25 Q Did you make a summary?

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1 nslt Zaccaria-direct 10

2 A Yes, I did.

3 Q I show you what has been marked Petitioner's
4 Exhibit 1.

5 Did you prepare this?

6 A Yes, I did.

7 Q You have testified to changes having been made
8 after the union's picketing began some time around the
9 beginning of March. Tell us what these changes were.

10 A We made several changes:

11 We had a board of directors meeting and decided
12 that the union was paying a pension, welfare and supplemental
13 employment benefits which we were advised by our legal
14 counsel had a value of approximately \$68. We decided that
15 we would set up a cash fund of \$75 per employee which would
16 not only meet the union's standards but exceed them.

17 (Petitioner's Exhibit 2 was marked for
18 identification.)

xxx

19 Q I show you what has been marked as Petitioner's
20 2. Is this the fund that the board of directors of the
21 company set up?

22 A Yes. This was the resolution passed on February
23 28th.

24 Q Is that your signature there?

25 A Yes, it is.

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MR. BIBLOWITZ: I would like to introduce this
into evidence.

MR. HAROLD: In support of his testimony, I have
no objection.

THE COURT: Received.

(Petitioner's Exhibit 2 was received in
evidence.)

Q Was this plan put into effect?

A Yes, it was.

Q Has it been implemented since then?

A Yes.

Q Do you know when the first payments were made
pursuant to that plan?

A The wages were increased as of the first week in
March.

Q The plan that is Petitioner's Exhibit 2?

A I believe it was the first week in April.

Q To your knowledge, have payments been made since
then?

A Yes. We instructed our bookkeeping department
for each and every employee that qualified under this plan
that they would take \$75 for each employee and deposit it in
a separate account.

Q What changes were made in the company situation

1 nslt

Zaccaria-direct

12

2 of your employees at that time?

3 A We felt that we had a pretty good plan to start
4 with. If you look at this exhibit --

5 Q Testify to the changes you made, please.

6 A We increased the wages to exceed the union's
7 wages.

8 Q How did you do that?

9 A We had an employee by the name of Eugene Harris.
10 I believe he was getting approximately \$180 a week. We
11 increased that to 255.

12 We had another employee, James Mangione, and he
13 was receiving 200, 225, and we increased it to 255.

14 Q What classification are they?

15 A They are the only two truck drivers that we
16 have.

17 Q Do they drive straight job trucks or tractor-
18 trailer trucks?

19 A We only have straight job trucks.

20 Q Do you have any other employees other than Mr.
21 Harris and Mr. Mangione who would have been included in the
22 union contract?

23 A Yes, one.

24 Q Who is that?

25 A He is a new employee who started with us about

six weeks ago and his name is Cliff. I don't know his last name.

Q Richman?

A Yes.

Q Has his salary been increased to over the union's scale at this point?

A According to our agreement.

Q With whom?

A With our employees. It is necessary to have a training period. People that work in the warehouse, such as his job as a warehouseman, it is very necessary that he understands and knows the locations of the various building material products that we carry. We carry approximately 250 different products. Before we invest money into uniforms we want to make sure that he is happy with us and we are happy with him.

We have a six-month training program. We pay 225 with the understanding that he will continue his employment or we will discharge him. If his employment continues, he will receive \$250 a week. It is a pre-arranged employment agreement.

Q How many paid sick days do you give to your employees?

A The union gives 7 sick days. We have given 10

1 nslt

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14.

2 sick days.

3 Q How many paid holidays do you give to your
4 employees?

5 A The union gives 12 paid holidays and we give 8.

6 Q How much paid vacation time do you give to your
7 employees?

8 A During the first year the union pays two weeks.
9 When a man is employed ten years with the union he receives
10 three weeks. With us it is five years. When a man is
11 employed twenty years with the union he receives four weeks.
12 With us after seven years we give four weeks.

13 Q Do you pay your employees overtime pay?

14 A No. We have guaranteed income. When a man works
15 for us he works on a basis of a yearly type contract. Each
16 week he receives 1/52 of his salary. If for some reason he
17 loses a day or an hour or two or three, he has to make up
18 that time. In the event that he is tied up on a delivery and
19 spends an extra hour or two, we mark up the time. We either
20 give him a day or a week.

21 Q Do you provide disability benefits to your
22 employees under the New York State disabilities benefits
23 law?

24 A Yes. The union supplies the benefits that are
25 applicable under the New York State law and we have a special

benefit. We realize and recognize if a man is injured or hurt on the job he suffers severely with lack of pay. If any of our employees are out for four weeks we give them a supplementary income of \$75 a week for thirteen weeks.

Q Do you pay for that or do the employees contribute?

A We pay for that.

Q Do you provide uniforms to your employees?

A Yes. When a man is with us we supply him with both summer and winter uniforms and rain gear plus gloves, as many as he needs.

Q To your knowledge, how much does this cost you for each employee?

A For employees' uniforms it costs us approximately \$7 a week or \$365 a year.

(Petitioner's Exhibit 3 was marked for identification.)

Q I show you what has been marked as Petitioner's Exhibit 3. Can you identify this?

A Yes.

Q What is that?

A That is Building Material Yard's agreement which is the agreement with the Local 456.

Q Under that agreemeent --

1 nslt Zaccaria-direct 16

2 MR. HAROLD: Would you like to let me see it?
3 I assume it is the same as our own.

4 MR. BIBLOWITZ: Sure.

5 Q Under that agreement --

6 MR. HAROLD: We would agree that the exhibit is
7 the same as our building supply agreement.

8 MR. BIBLOWITZ: Could we stipulate and introduce
9 that into evidence?

10 MR. HAROLD: I have just so stipulated as far as
11 the record is concerned.

12 (Petitioner's Exhibit 3 was received in
13 evidence.)

xxx

14 Q Under this union contract, do employees under
15 this union contract have to provide uniforms for their
16 employees?

17 A No.

18 Q Are there any other benefits that your company
19 gives that employers under this contract are not obligated to
20 give?

21 A Yes. We have what we call, our company is --

22 MR. HAROLD: Objection to the form of the question
23 "Obligated to give" misleads me.

24 MR. BIBLOWITZ: Obligated under this contract.

25 THE COURT: The union contract, 3.

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2 MR. HAROLD: Since they don't have it, they are
3 not obligated.

4 MR. BIBLOWITZ: Does he give any benefits that
5 the contract doesn't provide for?

6 A Yes. Our company is an employee-owned stock
7 company. The employees own our company. There are no major
8 stockholders. I myself own a very minor share of the stock.
9 We have a stock option plan. Any employee can purchase shares
10 of the corporate stock at book value. We match dollar for
11 dollar. If an employee puts in \$1,000 we match \$1,000.

12 We make payroll deductions if he so desires.

13 Q Since when has the company been doing this?

14 A This is a carryover of the mother company and
15 has been doing it for seven years; when this company first
16 started approximately a year and a half ago.

17 Q After making these changes what, if anything,
18 did you do?

19 A We notified the union. We sent them a telegram
20 that the changes were in effect and we met the area standard
21 requirements. We kindly requested that they remove their
22 pickets.

23 MR. BIBLOWITZ: Your Honor, the respondents in
24 his answer admits the telegram. Do you want it in evidence?

25 MR. HAROLD: The petitioner has already conceded

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2 that through lack of his own knowledge of which I don't
3 criticize him, he didn't know there was no refusal to meet
4 and we could have considerable amount of testimony as to
5 correspondence back and forth.

6 There is a letter which we might want to put in
7 evidence. Our refusal to meet is not an allegation which is
8 sustainable.

9 THE COURT: Are you stipulating for the record
10 that this telegram was received?

11 MR. HAROLD: I am stipulating that there was a
12 telegram received, yes.

13 THE COURT: He will get on with the other points
14 later on or you can get on with them, either one.

15 Q Did the union discontinue their picketing after
16 you sent them this telegram?

17 A No, they did not. They reduced their picketing
18 to one man. It was not a full time effort. After that tele-
19 gram it appears there were now three men back on the site.
20 It appears that they increased their picketing activities.

21 Q Did you attend a meeting on May 4, 1977 at the
22 office of your attorney Clifton, Budd, Burke & DeMeria?

23 A No.

24 MR. BIBLOWITZ: Nothing further.
25

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Zaccaria-cross

19

CROSS EXAMINATION

BY MR. HAROLD:

Q Did you ask the union to send you a copy of the agreement?

A Yes.

Q Did it?

A Yes.

Q Early on?

A I don't recall the date.

Q Long before you raised the wages?

A We needed the agreement to ascertain just what the rate of pay was and what the wages were and what was involved in meeting the area standard picket.

Q You asked early after the picketing began and the union replied by sending you a contract very early after that?

A I don't recall the dates. I did receive a contract.

Q From the union?

A From the union, after two letters.

Q Do you have them with you?

A No. I can produce them, if you would like.

Q Fine.

As to the telegram you sent, you followed the telegram up, I believe, with a mailgram, through your

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2 counsel, asking for a meeting, is that correct?

3 A Yes.

4 Q Your counsel received a letter so as reported to
5 you from the union attorney apologizing for missing a Monday
6 and calling him the following Tuesday saying "We are ready,
7 able and willing to meet," is that correct?

8 A Yes.

9 Q Counsel said "I will let you know" -- meaning to
10 the union lawyer, "-- when we can meet," and we did arrange a
11 meeting thereafter.

12 A Yes.

13 MR. HAROLD: I don't think we need to burden
14 the record with exhibits.

15 THE COURT: Fine.

16 Q As to the warehousemen and the six-month lower
17 wage, are you familiar with the union contract as to the rate
18 of pay instantaneous upon employment?

19 A Yes.

20 Q Is your rate of pay less than the union pay?

21 A We endeavor to pay people to learn the job.

22 Q Answer the question.

23 A Yes.

24 Q You pay less?

25 A For trainee, yes.

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21

2 THE COURT: It is for the trainee. It is for
3 those particular people.

4 MR. HAROLD: We don't have that kind of excuse.
5 Whether it is justified or not is not relevant.

6 THE COURT: He agrees with you. He said you are
7 right.

8 MR. HAROLD: I am now on page 2 of the contract.

9 Q Is it fair to say your method of paying overtime
10 is by compensatory time off?

11 A I beg your pardon?

12 Q If a person works overtime, he is not paid time
13 and a half for the overtime, correct?

14 A Yes.

15 Q Did you study the union contract in the same
16 respect?

17 A Yes.

18 Q What does the union contract provide for such
19 overtime?

20 A Time and a half.

21 Q You say you sometimes work Saturdays but not
22 regularly?

23 MR. BIBLOWITZ: I object.

24 THE COURT: He said at one time they were open on
25 Saturdays.

A We are no longer open on Saturdays.

Q When you were opened on Saturdays, did you pay time and a half?

A I don't recall.

Q You had a compensatory time?

A We started an entirely new and different program. We admit and know we were not meeting your area standard wages prior to our program.

Q Only recently this compensatory time plan accrued?

A Yes. This started when we adopted that resolution at the end of February.

Q Have you any clause that provides that when an employee starts later than the scheduled starting time, through no fault of his own, he shall receive his time computed from the posted starting time, the time he was late? I am calling your attention to page 2, Article 3C.

A Our employees work on a yearly basis. They put in an 8-hour day, five days a week. We are not concerned with whether they start five, ten, fifteen minutes later.

Q Do they receive credited time?

A If they come later, they work later.

Q They don't get credit for not working as in this clause?

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2 A I don't understand.

3 MR. HAROLD: That is argumentative. I will not
4 go further.5 Q Have you any intention to open on a Saturday
6 during the summer months?

7 A No.

8 Q Are you a retail store?

9 A You forced us to close our retail store and we
10 have since.11 Q If we are enjoined you will become a retail
12 store?13 A We do not believe we have the finances to have
14 that type of activity.15 Q If you did open on a Saturday, what would be your
16 rate of pay?

17 MR. BIBLOWITZ: That is speculative.

18 THE COURT: I will let him answer.

19 A We have no intentions of opening on a Saturday.

20 Q You have no scheduled overtime for work before
21 scheduled starting time if you call a man in early?22 A The act of putting in overtime is an accident;
23 if they have trouble with a delivery.

24 Q You never call in a man for starting early?

25 A We occasionally do.

2 Q What rate of pay do you have?

3 A If he works a half hour early, he quits a half
4 hour early.

5 Q If they start early no matter how much work is to
6 be done, at the end of an 8-hour day they go home?

7 A Yes.

8 Q If a truck is half delivered they stop?

9 A If it is necessary to put in an extra hour, we
10 owe him an hour and the following day we let him go home an
11 hour earlier. Our employees are very happy working for us.

12 MR. HAROLD: I move the answer be stricken.

13 THE COURT: I will do that.

14 I will instruct the jury to disregard that.

15 Q On page 3, sir, if your warehouseman drives a
16 truck, what is his rate of pay?

17 A He does not drive a truck.

18 Q Is he incompetent or unqualified?

19 A We have two truck drivers and not that much
20 business.

21 Q If one stays out sick and you need two trucks?

22 A If a man is not there for a day we do call other
23 people in but not from our warehouseman, but from another
24 company which we own.

25 Q What is the name of that other company?

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2 A Remodeling Consultants.

3 Q Do they have trucks?

4 A No.

5 Q Are they your direct employees?

6 A Not in all instances.

7 Q They drive trucks equal to the kind of trucks
8 your regular truck driver would drive?9 A Our trucks are all light. They don't require
10 special licenses.

11 (Question read.)

12 A One of our men does.

13 Q From this other company?

14 A Yes.

15 Q What does he get paid?

16 A I don't know. Should I answer that, your
17 Honor?

18 THE COURT: If you know.

19 A I believe he gets \$250 a week for five days.

20 Q You don't know?

21 A I don't know.

22 Q Does the other company pay him or does your
23 company pay him?24 A Most of the materials that are delivered are
25 for the accounts of the other company. What happens if we

1 nslt

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2 are out a man, they actually pick up their own materials and
3 make their own deliveries.

4 Q You run one man shy and subcontract the work to
5 the other company?

6 A We allow the company purchasing the material,
7 Remodeling Consultants, to pick up their own material. They
8 account for 50 percent of the amount of lumber that is sold.

9 Q Have you cost factored the difference in the
10 holidays you pay and the union contract requires?

11 A Yes, I have.

12 Q On what rate?

13 A I believe on the \$50 a day rate.

14 Q In what form do you give the holiday off to your
15 employees, if you do give them a day off?

16 A We give them eight days off.

17 Q Does that mean the barn is closed?

18 A Yes.

19 Q Do you call in the employees of the other company
20 to do deliveries when they need it?

21 A The shop is closed.

22 Q How about the repair company when it is closed?

23 A That is also closed.

24 Q Have you any provision, and take your time, sir,
25 be accurate, page 3, Article 4, the second paragraph of

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Zaccaria-cross

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Section 1, other employees who work at least two days in the week in which any such holiday falls shall receive pay for such holiday. Holidays shall be paid for irrespective of the day in which they occur.

Do you comply with that clause?

A Yes.

Q If one of the eight holidays falls on a Saturday, which is a non-working day, what does the employee get?

A The following Monday off. If a holiday falls on a Saturday, we close the following Monday.

Q Invariably in regard to the eight?

A Yes.

Q When it falls on a Sunday?

A We close on a Monday.

Q Have you had occasion in the period of time to lay employees off?

A We never lay employees off. It has been our policy from the inception of our business not to lay anyone off in any capacity in any category.

Q Are there any distinctions made in Paragraph 3 of Article 4 for employees working on Christmas, New Year's and Thanksgiving?

A We have never had any cause to work on holidays such as that since the inception of our business.

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2 Q Is it necessary for either of these two companies
3 to make deliveries to a job site for work the next day?

4 A Never.

5 Q No employee ever worked on a Sunday?

6 A The only time we ever worked on Sunday was when I
7 worked myself with the office staff to take inventory. That
8 doesn't effect people of this type.

9 Q What reasonable expenses incurred by the
10 employee do you reimburse, if any?

11 A You would have to explain "reasonable expenses."

12 Q Do you pay disbursements by means of or in part
13 for his --

14 A We pay all tickets, regardless of the reason.

15 Q If they are travelling and stay overtime and need
16 dinner--

17 A We don't run that type of business. We do pay
18 all their parking tickets or traffic violations.

19 Q What if they need to attend a Workmen's Compensa-
20 tion hearing or court appearance?

21 A We don't dock our men for time taken off.

22 Q Have they taken time off?

23 A In our guaranteed income, if a man takes time off
24 he makes up the time. Their pay is constant once they pass
25 our probationary period.

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2 Q Have you any agreement with the employees concern
3 ing the payment of severence pay if you should come to lay
4 anybody off?

5 A I keep repeating: We don't lay people off. We
6 discharge people, but don't lay people off and then hire them
7 back.

8 Q I want to know whether you have any agreement
9 with your employees or in any form, an understanding if it
10 should become necessary by the fall off of business to lay
11 off people which you pay severence pay.

12 THE COURT: He said he doesn't lay anybody off.
13 You are asking a hypothetical question which doesn't exist in
14 his shop.

15 MR. HAROLD: Very well, sir.

16 Q In computing your sick leave, how do you
17 compute the days entitlement?

18 A Our agreement says a man must be willing,
19 able and ready to work, to qualify for guaranteed income.
20 If a man doesn't show up for work, he can call in a sick
21 day. We will either pay him what he has left of the sick
22 days or carry it over to the next year.

23 Q Do you have a copy of that agreement?

24 A We have a verbal agreement which we intend to
25 put in a written form.

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Zaccaria-cross

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2 Q Do you have any notes currently in existence
3 other than this tabulation; indicating Exhibit 1 for
4 identification.

5 THE COURT: That's it, is it, so far?

6 THE WITNESS: Yes, so far.

7 Q Has this Exhibit 1 been distributed to your
8 employees to tell them what their benefits are?

9 A This Exhibit 1 was only recently made up to
10 accommodate this appearance in court, but it will be this
11 weekend.

12 Q Other than this oral statement you gave to
13 your employees, you have no written communication with them?

14 A Exhibit 1 will be put in their paychecks this
15 week.

16 Q I call your attention to Exhibit 2 in evidence.
17 Do you have a copy before you, sir?

18 A No.

19 MR. BIBLOWITZ: I will get it.

20 (Handed to the witness.)

21 Q Is there any form of trust instrument created to
22 support and repel the repetitive payment of \$75 a week into
23 this supplemental employee plan?

24 A Not at this time.

25 Q Has this plan been submitted to the IRS for

1 nslt

Zaccaria-cross

31

2 approval?

3 A Not at this time.

4 Q If both current employees should die tomorrow,
5 what would be your obligation to them if they had not yet
6 worked ten years?

7 A We are an employee-owned company. Our employees
8 own the company. The board of directors would elect a new
9 president, a new general manager and I am sure they would
10 consider them.

11 Q Tell me under Exhibit 2 what would be the obliga-
12 tion to the employee of the \$75 a week that you put aside for
13 the employee before he is in your business ten years.

14 A As I previously said, we haven't formulated any-
15 thing yet.

16 Q This plan says in paragraph 5 that it is irrevocable,
17 is that correct?

18 A Yes.

19 Q With whom did you make the commitments that it
20 was irrevocable?

21 A With the board of directors.

22 Q Can the board of directors change the resolution?

23 A I hardly think it would be in the best interest of
24 the company. The object is to keep the union out of our
25 family, close-knit association with our employees. It would

1 nslt

Zaccaria-cross

32

2 be detrimental to go back on our plan.

3 Q From a corporate point of view, you have the
4 power to change the plan?

5 A The stockholders are the employees. We have 36
6 stockholders who work for the company.

7 Q Who are the members of the board of directors?

8 A They are listed here. They happen to be workers.

9 Q Board of directors?

10 A They are listed in our resolution.

11 Q There are five members on the board of
12 directors?

13 A Yes.

14 Q What is the company capacity of Mr. Richard
15 Klatt, called secretary?

16 A He is a consultant for Remodeling Consultants.

17 Q On per diem?

18 A No. He receives a fee basis.

19 Q Is he an employee of Construction City or
20 Remodeling Consultants?

21 A It is a wholly owned subsidiary.

22 Q Who is Royden Dygert?

23 A He is executive president of Remodeling.

24 Q You are down here as vice president and general
25 manager.

1 nslt

Zaccaria-cross

33

2 A Yes.

3 Q Who is Felix Mingione? Is he one of the current
4 employees?

5 A Yes.

6 Q Who is Agatino Amato?

7 A He is a carpenter foreman.

8 Q These members of the board of directors adopted
9 this corporate resolution?

10 A Yes.

11 Q The same board of directors have the power,
12 whether they have the judgment, the power to change this
13 corporate resolution?

14 A I would assume so.

15 Q Did you make this corporate resolution available
16 to your attorney, Mr. McDonough?

17 A Yes.

18 MR. HAROLD: May I ask counsel if Mr.
19 McDonough will be called?

20 MR. BIBLOWITZ: Yes, he will be.

21 Q Would you know of your own knowledge whether
22 this corporate resolution was made available through your
23 attorney to the NLRB Regional Office?

24 MR. BIBLOWITZ: Your Honor --

25 MR. HAROLD: Will you advise the Court whether

1 nxlt

Zaccaria-cross

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2 this document is in the NLRB Regional Office possession and
3 if so, when?

4 MR. BIBLOWITZ: I don't see the relevance as to
5 when the NLRB got this resolution.

6 MR. HAROLD: Subject to connection.

7 MR. BIBLOWITZ: The charges were filed on the 26th
8 of April, so it was somewhat after that, within a week after
9 that, I assume.

10 THE COURT: Within a week after the 26th of
11 April.

12 MR. HAROLD: This is the first time I have seen
13 this document although the NLRB had it in its possession but
14 did not incorporate it in its papers here or reply memorandum
15 here and I will speak and let counsel dispute it, if I may --

16 THE COURT: I will give you enough time in the
17 element of surprise that you are apparently seeking to estab-
18 lish here to read it over, do whatever you want and come back
19 again. That is your only relief, as far as I am concerned.

20 MR. HAROLD: Fine. I may not need it. I think I
21 can get through Mr. McDonough the only other fact I think I
22 may need.

23 Q Where is this fund of \$75 a week kept?

24 A It is put into a special account.

25 Q Savings account?

1 ns1t

Zaccaria-cross

35

2 A A special checking out, I believe.

3 Q Who has the authority to withdraw from it?

4 A As far as I know, nobody has the authority to
5 withdraw from it.

6 Q No interest is in a checking account?

7 A No.

8 Q There is no investment in this money? It accrues
9 to the corporate of this "fund"?

10 A Not at the present time.

11 Q Is there any money paid into this fund for the
12 probationary employee?

13 A No.

14 Q Do you know whather the items that you have
15 listed on the petitioner's exhibit in regard to pension,
16 welfare, supplemental and unemployment insurance contribu-
17 tions, includes all employees employed under the union con-
18 tract without any regard to probationary employees?

19 A I don't understand your question.

20 Q You have studied the union contract which was
21 forwarded to you?

22 A What page are you referring to?

23 Q I'm not. I am generally asking you the question.
24 You know because you have listed it, what the
25 union contract requires to be paid into a Taft-Hartley trust

1 nslt Zaccaria-cross/redirect 36

2 for pensions, welfare and supplemental employment benefits.

3 Have you ever seen anything in the language that
4 says the employer doesn't have to pay contributions for
5 probationary employees?

6 A No.

7 Q So that all new probationary employees are not
8 costing you in one form or another \$75?

9 A Right.

10 MR. HAROLD: I just want to read these two notes,
11 sir. May I ask your Honor to assist me? May I assume that
12 the exhibits attached to our answer in an affirmative defense
13 need not be put in as exhibits?

14 THE COURT: There is no objection to me consider-
15 ing them as part of this case, so they are deemed to be marked
16 without actually being marked.

17 MR. HAROLD: Thank you, sir.

18 I have no further questions.

19 REDIRECT EXAMINATION

20 BY MR. BIBLOWITZ:

21 Q How long has it been since Construction City was
22 open on a Saturday, approximately?

23 A Several months now.

24 MR. BIBLOWITZ: I have nothing further.

25 THE COURT: You may step down.

(Witness excused.)

1 nslt

37

2 MR. BIBLOWITZ: I call Thomas McDonough.

3 T H O M A S M C D O N O U G H, called as a
4 witness on behalf of the National Labor Relations
5 Board, having first been duly sworn, testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. BIBLOWITZ:

9 Q Your address, please?

10 A 45 West 94th Street, New York, New York.

11 Q Are you presently employed by the law firm of
12 Clifton, Budd, Burke & DeMeria?

13 A Yes.

14 Q Is that firm counsel to Construction City
15 Corporation?

16 A Yes.

17 Q Were you present at a meeting held at the office
18 of that law firm on May 4, 1977, regarding this matter?

19 A Yes.

20 Q Tell us who else was present at that meeting.

21 A Fritz C. Payne from Construction City, the book-
22 keeper, John Harold, Mr. Revellese and their accountant, Sid
23 Bernstein, I think his name is.

24 MR. HAROLD: Bernard Fichenboem.

25 Q How did you arrange for this meeting to take place

NSLT

McDonough-direct

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1 NSLT
2 A Since the date of the original telegrams, I had
3 spoken to Mr. Harold several times on the telephone and we
4 arranged for the meeting that morning.

5 Q Was that the telegram on the 22nd?

6 A The first was the 20th.

7 MR. BIBLOWITZ: That is admitted to by
8 respondents.

9 MR. HAROLD: May I save the Court and counsel
10 time?

11 Is there any inference that we improperly delayed
12 a meeting? I don't have to answer this time sequence if that
13 is not established. The significance of it --

14 THE COURT: He says no.

15 MR. BIBLOWITZ: I wanted to make it clear time-
16 wise.

17 MR. HAROLD: It is conceded not to be relevant,
18 the time between the first telegram and the time of the
19 meeting?

20 MR. BIBLOWITZ: That is correct.

21 Q What time did this meeting begin?

22 A 9 a.m.

23 Q Tell us to the best of your recollection what
24 took place at this meeting, what was said.

25 A I began the meeting: We sat down at the

nslt

McDonough-direct

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1 nslt
2 conference table. I was directly across from Mr. Harold. Mr
3 Revellese was to his right. I began the meeting saying,
4 "Compare the wages we paid with the wages that are paid to a
5 456 member."

6 There were some minor discussions about whether
7 or not there was the big trucks as opposed to small trucks.
8 We got through that.

9 Q Tell us what was said.

10 MR. HAROLD: We will concede that the issue of
11 big trucks and small trucks is not relevant.

12 A Then I began to go through the contract. I
13 opened up the 456 contract to what I thought were the cost
14 items. I said, "According to my analysis you pay \$30 a week
15 for one thing and 28 for another." At that point I was
16 interrupted.

17 Mr. Harold said that he disagreed with my
18 analysis. Mr. Revellese said "What about layoffs? What do
19 you do when there's no work?"

20 I think I said, "If you would just let me finish
21 my presentation we can get to that."

22 I think at that point I explained to them my
23 concept of area standard and why I was explaining the terms.
24 I was explaining because I think they were looking for dif-
25 ferent terms and different things I was going to give them.

1 nslt

McDonough-direct

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2 I described the corporate plan. I showed them
3 the copy of it although he didn't care to look at it.

4 I said, "We have the books there and are ready to
5 show them we were paying what we said we were paying."

6 Both Mr. Harold and Mr. Revellese said at one
7 point early in the conversation that they weren't looking for
8 recognition. They insisted upon that; Mr. Harold very
9 emphatically.

10 After I got through comparing what I considered to
11 be the cost items, because I think under board law area
12 standards has to do with standard cost, Mr. Harold said that--
13 I don't remember all of his words, I remember him pounding the
14 table -- unless you meet this contract term for term then you
15 are not meeting area standards.

16 There was some discussion that did not amount to
17 much which I don't remember and then they asked for a break.
18 They had it. When they came back Mr. Harold said they were
19 still not satisfied we were meeting area standards. They
20 said you have to meet this contract point for point.

21 Mr. Revellese said, "You don't have any seniority.
22 You don't have job security. You don't have layoff programs."
23 And I explained the same things Mr. Zaccaria said about lay-
24 offs, that the company doesn't lay people off.

25 I think I asked Mr. Harold "What is the area

1 nslt

McDonough-direct/cross 41

2 standards; what do you see to be the area standards?"

3 Without saying a word Mr. Harold pointed to the
4 contract. Because I did not think there was any more to be
5 gathered, I let the meeting end there.

6 MR. BIBLOWITZ: Nothing further of this witness,
7 your Honor.

8 CROSS EXAMINATION

9 BY MR. HAROLD:

10 Q Did I ask you for a copy of the board resolution?

11 A Yes.

12 Q Did you decline to give it to me?

13 A I declined to give you a copy. I showed you the
14 one we had. You didn't look at it. I picked it up and decline
15 to give you a copy, yes.

16 Q Did I ask you whether the plan was a funded plan?

17 A I don't remember.

18 Q Did I ask you whether you had IRS approval?

19 A Yes, you did. I explained that the company did
20 not know whether they wanted to go through all that. I had
21 seen other plans that received IRS approval that were 75
22 pages long. We were talking about a plan for three people.
23 I said, "The company may find something else to do with the
24 money. It is an incredible procedure to get IRS approval."

25 Q Would it be fair to say that our response

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McDonough-cross

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2 concerning item for item came after in point of time your
3 assertions that you met welfare and pension and supplemental
4 benefits by reason of the board of directors resolution?

5 A Yes.

6 Q Would it be fair to say that our primary objection
7 which caused us to talk about cost items in terms of cost
8 benefits was generated by our refusal to accept as a valid
9 cost item the corporate resolution?

10 A No.

11 MR. HAROLD: I have no further questions.

12 MR. BIBLOWITZ: I have one further witness.

13 THE COURT: I have a jury out. How long will this
14 witness take?

15 MR. BIBLOWITZ: It will also be short.

16 THE COURT: If it is cumulative, maybe he would
17 concede.

18 MR. HAROLD: She was there and she told us the
19 same things he told us and our first witness told us.

20 THE COURT: That is cumulative. Since he is
21 willing to concede that, what do you have?

22 MR. BIBLOWITZ: I have one further thing to
23 prove, that the payments pursuant to this resolution were
24 actually made and the wages were actually increased. She is
25 the bookkeeper.

1 nslt

2 THE COURT: Would you stipulate that she will so
3 testify without conceding the truth thereof?

4 MR. HAROLD: Yes.

5 Mr. Zaccaria has already said that. The Court
6 would say what I would say.

7 MR. BIBLOWITZ: I rest, your Honor.

8 MR. HAROLD: Would you concede that each of these
9 welfare funds referred to in our contract are Taft-Hartley
10 trust funds jointly IRS approved?

11 MR. BIBLOWITZ: I would concede that.

12 MR. HAROLD: I have no further questions and no
13 further stipulations. I will not call Mr. Revellese.

14 THE COURT: Both sides rest?

15 MR. BIBLOWITZ: Yes, your Honor.

16 MR. HAROLD: Yes.

17 THE COURT: Do you want to submit anything post-
18 hearing?

19 MR. HAROLD: Yes, sir.

20 THE COURT: How much time do you want?

21 MR. BIBLOWITZ: As short a time as possible. The
22 middle of next week, since they are still picketing.

23 THE COURT: When will you supply him with yours
24 or are you going to submit them jointly?

25 MR. HAROLD: I don't want to indulge the Court
anymore, because of my little complaint about getting them

1 nslt

2 secondhand. I would appreciate in asking that they serve me
3 with a memorandum of law so I know what their case position
4 is and I may answer it. If it doesn't abuse the Court and
5 the process I would like over the weekend, which is the
6 following Monday.

7 THE COURT: You give it to him by Wednesday and
8 he will follow it by Monday.

9 MR. HAROLD: I won't have anything to give you by
10 Wednesday.

11 THE COURT: He will answer yours. If you have
12 any need to answer that you can submit anything on the follow-
13 ing day.

14 MR. BIBLOWITZ: I will give him anything by next
15 Wednesday.

16 THE COURT: And he answers by Monday and you can
17 reply, if you want to, by Tuesday. If he wants to reply to
18 you, he can do it in his sleep. I will decide it shortly
19 thereafter.

20 Thank you, gentlemen for assisting the Court.

21 Can we get a lessening of the pickets?

22 MR. HAROLD: We will agree to keep a reasonable
23 number of people there.

24 THE COURT: I thought you had one there and you
25 put three there.

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2 MR. HAROLD: Three would not be unreasonable.

3 MR. REVELLESE: It varies each day.

4 MR. HAROLD: I will get a commitment for you.

5 MR. BIBLOWITZ: I could issue a TRO.

6 MR. HAROLD: I don't want that.

7 THE COURT: Let's agree about it.

8 MR. HAROLD: We would like three. We will take
9 a direction without a matter of order.

10 THE COURT: I think one is enough to make your
11 point.

12 MR. HAROLD: It is a question of how broad the
13 property is.

14 THE COURT: You had one there all the time?

15 MR. HAROLD: I'm not so sure it is true, sir.
16 May I consult Mr. Revellese?

17 THE COURT: Do it over there and tell me what
18 you agree to later.

19 MR. BIBLOWITZ: Can I briefly ask if pending
20 this, the next week and a half, it would be possible to cease
21 picketing?

22 MR. HAROLD: No, sir. If I have to have one, I
23 will have one. Counsel ask your clients --

24 MR. McDONOUGH: We would like to have it stopped.

25 MR. HAROLD: The Court has not asked me to do

1 nslt

2 that. One is all you talk about, one is what you have
3 got.

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Jerome Zaccaria	5	19	36	
Thomas McDonough	37	41		

EXHIBIT INDEX

<u>Petitioner</u>	<u>Identification</u>	<u>In Evidence</u>
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2	10	11
3	15	16

eorf

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x
WINIFRED D. MORIO, REGIONAL :
DIRECTOR REGION 2 OF NLRB, :
etc. :

Plaintiff, : 77 Civ. 2191 (JMC)

-against- :

LOCAL 456, INTERNATIONAL :
BROTHERHOOD OF TEAMSTERS, :
CHAUFFEURS, etc. :

Defendants. :

-----x
BEFORE:

HON. JOHN M. CANNELLA,

District Judge

New York, N.Y.

May 31, 1977 - 10:00 a.m.

APPEARANCES:

NATIONAL LABOR RELATIONS BOARD
Appearing for the Plaintiff,
BY: JOEL P. BIBLOWITZ, ESQ.,
Of Counsel.

JOHN R. HAROLD, ESQ.,
Attorney for Defendant,
160 South Central Avenue,
Elmsford, New York

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2 (Case called.)

3 MR. HAROLD: Good morning, your Honor.

4 My application is to reopen the hearing for the
5 purpose of putting in testimony which I omitted to put
6 in in my true desire to expedite the procedures for the
7 Court.

8 Let me make it clear on the record that the
9 Court said to take any time you need and in no sense did
10 the Court deny me that opportunity, but I thought to my
11 fault that the thrust of their proof was the economic
12 package and I was quite willing to settle for that; if
13 that was the issue, I could win it, but your decision,
14 which I have had the opportunity to read since I first
15 called your secretary, indicates that the crux of the
16 case was the language had on May 5th where point for point
17 it was said in context, we think, whether that was an
18 economic package, not a desire to represent these people
19 who the NLRB has already said we legitimately did not.

20 Had I thought it through, sir, instead of
21 trying to expedite things, and you will remember that
22 we did cooperate to do that, I certainly would have called
23 Mr. Revalese as a witness to that conversation and also
24 testimony as to the negotiations leading to the new
25 contract last July where the employers complained against

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2 the ability to compete with nonunion below scale wages
3 and fringe benefits.

4 So, I cannot go either for a reconsideration
5 by you or to the circuit court without that additional
6 part of the testimony and I hold for your direction
7 producing Mr. Revalese at any time you direct and I am
8 sorry to inconvenience the Court, which of course I do.

9 MR. BIBLOWITZ: Your Honor, may I respectfully
10 oppose the request. I don't think it would make any
11 difference whether the economic package was comparable
12 or not. At the meeting that there was much testimony
13 about, the May 4th meeting, it was clear statements were
14 made that showed that the respondent's real purpose
15 was recognitional and we could go for hours and hours
16 of comparability over the wages and other provisions and
17 it wouldn't make any difference legally, your Honor.

18 I think the evidence showed that the purpose
19 of the May 4th meeting was recognitional and, therefore,
20 a violation of law.

21 MR. HAROLD: Mr. Revalese said, and this is what
22 might be misconstrued, what about seniority, what
23 about layoffs. This is not in the context that we want
24 that clause, but there is no purpose to this claimed
25 economic comparability unless it is payable and seniority

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2 and layoff relate to whether anybody will ever get it
3 and while it may be put aside, you will remember the
4 director said it could be revoked on another resolution.

5 I will not go into the matter on that issue, but
6 I want the context of that conversation to be more fully
7 exposed to the Court and I limited myself in my true
8 desire to be helpful.

9 THE COURT: I decline both to rehear the matter
10 and to grant the stay with an exception to the respondent.

11 MR. HAROLD: Thank you kindly for hearing us,
12 sir.

13 THE COURT: All right.

14 (Time noted 10:05 a.m.)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPULO
JWH-101-
VF

WINIFRED D. MORIO, Regional Director,
Region 2 of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,

Petitioner,

Case No. 77 Civil 2191

-against-

Judge Cannella

LOCAL 456, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Respondent.

STIPULATION AS TO EXHIBITS

It is stipulated by and between the attorneys for the respective parties to the above-entitled matter that the annexed exhibits hereto are the correct exhibits presented in the above-entitled proceedings, and so designated in the record.

John R. Harold

John R. Harold
Attorney for the Respondent
160 South Central Avenue
Elmsford, New York 10523

/s/ Joel P. Biblowitz

Edward H. Bennett
Attorney for the Petitioner
by Joel P. Biblowitz
Region 2, NLRB
Federal Office Building
26 Federal Plaza, Room 3614
New York, NY 10007

<u>TYPE</u>	<u>ITEM</u>	<u>UNION/WKLY</u>	<u>CCC/WKLY</u>	<u>DIFF/WKLY</u>	<u>YRLY \$</u>
Driver	Salary	\$50.78	\$51.00	.22 Daily	+57.20
Yard Man	Salary	\$48.78	\$50.00	1.22 Daily	+317.20
All Employ	Sick Pay	7 Days	10 Days	3 days \$50.00	+150.00
All Employ	N.Y.S. Dis-ability	Same	Same	-0-	-0-
All Employ	Supp. Disa-bility	None	After 4 wks. 75.00 wkly for 13 wks.	13@5.00	+260.00
All Employ " - "	Pension Welfare Sublemental Unemployment	\$28.00 \$30.00 = \$10.00	\$75.00	\$7.00 Wkly	+364.00
All Employ	Vacation	1st yr 2 weeks	1st yr 2 weeks	-0-	-0-
"	"	10 yrs. 3 wks.	5 yrs. 3 wks.	1 week	250. yr for 5 yrs. +1,250
"	"	20 yrs. 4 wks.	7 yrs. 4 wks.	1 week	250. yr for 15 yrs. +3,750
All Employ	Uniforms	None	Winter/Sum. Rain Gear	7 wkly	+364.00
All Employ	Holidays	12 Days	8 Days	4 Days \$50.	-200.00
All Employ	Stock Option	None	*See Note I	?	?
All Employ	Guaranteed Income	None	**See Note II	?	?

*NOTE I

All employees of CCC who have been employed by CCC for a period of not less than one year, are entitled to purchase the common stock of the Corporation at book value. For every dollar that an employee invests toward the purchase of common stock, the company contributes the sum of \$1.00 toward the purchase of same, thereby matching the investment of the employee. For example, if an employee invests \$10.00 per week toward the purchase of common stock in the company, the Corporation also invests \$10.00 per week on behalf of said employee for the purchase of additional stock.

**NOTE II

Guaranteed Income-An annual guaranteed income is a benefit enjoyed by drivers and yard men. Each week a driver or yard man will receive 1/52nd of his annual income provided he is ready, even though the company has no work for him. In the event no work is available, the driver or yard man is to report to the company office or any other place as directed by the employer, to work his normal work day. Guaranteed income is based on a five (5) day work week salary. If, for any reason, an employee works only four (4) days in one week, he is required to make-up the lost time by working overtime.

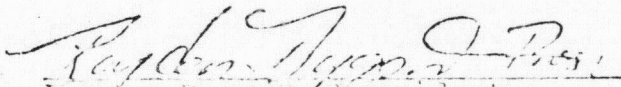
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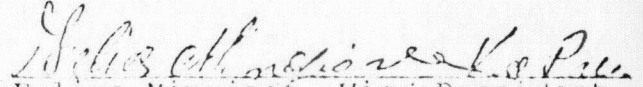
R E S O L U T I O N

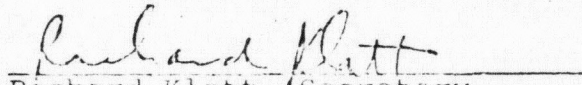
The Board of Directors of Construction City Corporation, at a regular meeting on Monday, February 28, 1977, at the corporate offices, all being present, deem it hereby

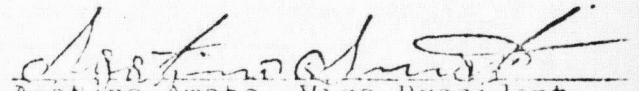
RESOLVED:

That the Employee Supplemental Compensation Plan, attached hereto as Schedule A, be instituted and the terms of the plan be effective immediately.


Royden Dygert, President


Felice Mingione, Vice President-Treasurer


Richard Klatt, Secretary


Agatino Amato, Vice President


Jerome J. Zaccaria, Vice President-General Manager

P.T. 7/10/77 2

Schedule A

This schedule was duly adopted as a corporate resolution by the Board of Directors of Construction City Corporation, February 28, 1977.

Employee Supplemental Compensation Plan

1. There shall be established by the Corporation the Employee Supplemental Compensation Plan (hereinafter "the Plan").
2. The Corporation shall contribute seventy-five dollars (\$75) per week, in the name of the following Employees: James Mingione, Eugene Harris, Manson Metz and Rusty Dygert, payable concurrently with the Employee's wages, to a separate and distinct fund, pursuant to the Plan.
3. Full vesting shall occur after ten (10) years of employment, which ten-year period begins on the first day after an Employee's probationary and training period, which is hereby deemed to be for a period of six months.
4. Any dividends on any stock or securities purchased in the name of an Employee shall accrue to the Employee's account, but are not vested until he has completed ten (10) years of service.
5. All amounts paid to the Plan shall constitute irrevocable contributions by the Corporation to the Plan and shall be for the exclusive benefit of the Employees.

6. The cost of administering the Plan shall be paid by the Corporation.

7. The Administrator of the Plan shall be Jerome Zaccaria, Sr. In the event of his inability to carry out the duties of Administrator, the Administrator shall be ROYDEN
DEGROOT.

8. All funds contributed to the account shall be used by the Administrator to make sound financial investments on behalf of the Employees.

9. It is the intention of the Employer to include in the Plan all Employees, excluding Supervisors, Managerial Employees and Confidential Employees, as these terms are defined by the National Labor Relations Act.

BUILDING MATERIAL YARDS AGREEMENT

July 1, 1976 - June 30, 1977

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AGREEMENT made as of the first day of July, 1976, by and between _____ (hereinafter termed the "Employer"), and Local 456, Teamsters and Chauffeurs Union, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter termed the "Union").

The parties hereto agree as follows:

ARTICLE I - UNION RECOGNITION:

1. The Employer hereby recognizes the Union as the sole and exclusive collective bargaining agent for employees in the following classifications:

Chauffeurs, helpers, yardmen, machinemen, mixermen, checkers, tallymen, warehousemen, platform men, cross carrier operators, lift operators and crane operators.

2. All employees in such classifications shall become and remain members of the Union as a condition of continued employment, thirty (30) days after the execution of this Agreement. All new employees shall, as a condition of continued employment, become members of the Union thirty (30) days after the date of their initial employment, and remain members thereof throughout the term of this Agreement.

3. The Employer shall notify the Union, in the event the Employer needs additional help, and the Union shall refer applicants, without discrimination as to their membership or non-membership in the Union, and the Employer shall have the right to determine which of the said persons referred by the Union shall be employed.

4. In making such referral or selection, the parties shall give consideration to the prior experience of the applicant in the industry, together with the applicant's competence to perform the work.

5. The Employer shall deduct from the wages of employees covered hereby, who sign dues deduction authorization forms, the sum of five cents (05¢) for each hour worked weekly by each employee and remit the same monthly to the Union with a list of employees, the number of hours worked by each and the name of any employee who shall fail to sign such authorization. Such authorizations shall be signed in duplicate with one copy supplied to the Union, and they shall be irrevocable for a period of one year or the termination of the collective bargaining agreement, whichever is sooner, and shall be automatically renewed from year to year unless sixty (60) days prior to any anniversary date such authorization shall be terminated by written notice to the Employer and to the Union.

ARTICLE II - WAGES:

Effective
July 1, 1976

1. Chauffeurs:	
Straight jobs	\$50.78
Tractor trailers and three-axle trucks	\$51.78
Yardmen, helpers, warehousemen, and platform men	\$48.78
Machine men and mixer men	\$50.78
Life operators, ross carriers and crane operators, checkers, tallymen and countertermen	\$50.78

2. In the event a lower paid employee is assigned to a position in a higher scale, such employee shall be paid at the higher rate for the full day in which he performed such work, irrespective of the number of hours he actually works. In no event shall an employee receive less than the wage provided for in his classification.

3. The Shop Steward and Maintenance Man shall be paid at the rate received by the highest paid employee in each yard, who work under the terms of this Agreement.

ARTICLE III - HOURS OF WORK AND OVERTIME:

1. (a) The normal work week of all employees shall consist of forty (40) hours, eight (8) hours per day, five (5) days per week, from Monday to Friday.

(b) The work day shall start at 7:00, 7:30 or 8:00 A.M. However, in wholesale yards on special long hauls, the Employer may start the day any time from midnight to 8:00 A.M. The Employer shall post the starting time not later than 4:15 P.M. of the preceding day.

(c) Any employee who shall start work later than the posted starting time, through no fault of his own, shall, notwithstanding, have his time computed from the posted starting time.

2. A lunch period of thirty (30) minutes or one (1) hour shall be taken at the option of a majority of the employees. The lunch period shall be uniform for all employees of the Employer.

3. Employees assigned to work on any day, except Saturday, Sunday or a Holiday, shall receive not less than eight (8) hours' pay. In the event any employee is assigned to work on Saturday, Sunday or a Holiday, he shall receive not less than four (4) hours' pay, and, if he works in excess of four (4) hours, he shall receive not less than eight (8) hours' pay.

4. Employees shall be paid at the rate of one and one-half (1-1/2) times the straight-time hourly rate of pay for all work performed for the following:

- (a) work before the scheduled starting time or after the scheduled finishing time;
- (b) work in excess of eight (8) hours per day, or forty (40) hours per week;
- (c) work performed on Saturdays.

5. In the event an employee is assigned to work before the scheduled starting time, he shall nevertheless be afforded work or paid for not less than eight (8) hours, computed from the scheduled starting time hereinabove specified.

6. All employees who have worked or hereafter shall work for the Employee ninety (90) days or more (hereinafter called regular employees) shall be guaranteed a minimum of forty (40) hours' work at the regular straight-time rate of pay for each work week during which such employee performs any work for the Employer, irrespective of the day of the work week such employee reports to work. In the event such employee is not employed for the said minimum of forty (40) hours in any work week, the Employer nevertheless guarantees to pay such employee the said minimum of forty (40) hours' pay. The Employer shall post information not later than Friday of the preceding week, whether any regular employee is required during the following week.

ARTICLE IV - SUNDAYS AND HOLIDAYS:

1. Regular employees, without working, shall receive a day's pay at straight time for the following holidays:

New Year's Day	Labor Day
Lincoln's Birthday	Columbus Day
Washington's Birthday	Election Day
Good Friday	Veteran's Day
Decoration Day	Thanksgiving Day and
Independence Day	Christmas Day

Other employees who work at least two (2) days in the week in which any such Holiday falls shall receive pay for such Holiday. Holidays shall be paid for, irrespective of the day on which they may occur.

2. Regular employees shall be paid for all Holidays enumerated herein occurring within the period of fifteen (15) calendar days following the date of their lay-off.

3. Any employee performing work on a Holiday shall be paid at the rate of time and one-half (1-1/2) in addition to pay for the Holiday, except when he performs work on Christmas, New Year's Day and Thanksgiving, when he shall be paid at the rate of double the straight-time hourly rate, in addition to pay for the Holiday. Overtime pay on Holidays shall be paid for at double and one-half the straight-time hourly rate, except on Christmas, New Year's Day and Thanksgiving, when it shall be paid for at the rate of triple the straight-time hourly rate of pay. When a Holiday (or Holidays) falls during an employee's vacation, he shall be guaranteed an additional number of days off with pay.

4. Work performed on Sundays shall be paid for at twice the straight-time hourly rate of pay.

ARTICLE V - EMPLOYEE EXPENSES:

1. The Employer shall pay employees all reasonable expenses incurred by them while they are away from home in pursuance of the Employer's business.

2. The Employer shall pay employees for the time lost on account of court appearances in the Employer's behalf and for presence at hearings conducted before the Workmen's Compensation Board.

ARTICLE VI - EXTRA EQUIPMENT:

1. In the event the Employer hires additional equipment, his employees shall operate such equipment, if they are not otherwise assigned to work, but, in any event, the Employer shall operate such equipment in accordance with the provisions of this Agreement.

ARTICLE VII - PAY AND RECORDS:

1. The Employer shall pay wages weekly, in cash. The Employer shall maintain records of the employment of each employee and comply with all the laws governing the employment of employees (including, but not limited to, Workmen's Compensation and Social Security).

ARTICLE VIII - DISCHARGE:

1. The Employer may discharge an employee for just cause. However, the Employer shall discuss his proposed actions with a representative of the Union before the discharge becomes effective.

ARTICLE IX - LAYOFF AND REINSTATEMENT:

1. Seniority shall be in accordance with classifications. The Union and the Employer have prepared a list containing the seniority standing of the employees. In the event a layoff shall become necessary, the employee with the least seniority shall be the first laid off. Rehiring shall be accomplished in inverse order of layoff. However, notwithstanding the above, the Shop Steward shall be the last employee laid off and the first one to be rehired. An employee shall be paid all wages due upon layoff not later than the first pay period following the layoff.

2. Seniority shall not be deemed breached if an employee is rehired within one (1) year after his layoff.

3. Senior employees shall be given first preference for overtime work.

ARTICLE X - SEVERANCE PAY:

1. Except for an employee sixty-five years of age or older who is eligible for retirement under the Westchester Teamsters Pension Plan, an employee who has been in the employment of the

Employer or its predecessors in interest for five (5) years or more without a break in his seniority on the date of termination or removal of his Employer's business will be entitled as hereinafter provided to severance pay.

2. Severance shall be payable to those entitled on the occurrence of any of the following events:

- (a) On the complete liquidation of the Employer's business, or
- (b) On a sale by the Employer of its entire business, or
- (c) On the complete removal of the Employer's business from the territorial jurisdiction of the Union.

3. Employees having at least five (5) years of unbroken seniority with the Employer on the date of such liquidation, sale, or removal who are either actively at work on that date or who on that date have been laid off for less than twelve (12) months and did not either voluntarily quit their employment or suffer discharge for cause prior to such date are the only employees eligible for severance pay, except as otherwise provided in the next paragraph.

With the consent in writing of the Employer, the Union, and the employee, obtained prior to the expiration of the employee's twelve-month layoff, an employee may extend for one year his layoff status in which case his seniority rights to rehiring accrued to the date of the beginning of such extended period and his eligibility for severance hereunder shall continue during the extended period.

4. An employee entitled to severance pay shall receive two (2) weeks' pay (eighty (80) straight-time hours) for the first five (5) years of service, and one (1) week's pay (forty (40) straight-time hours) for each additional two (2) years thereafter, or major fraction thereof, provided, however, that in no case shall the total severance pay obligation to any employee exceed five (5) weeks' pay, except when the elimination of his job is due to the Employer's transfer of its entire business operations outside of the territorial jurisdiction of the Union, in which case the five (5) week maximum limit above mentioned shall not apply. Upon receiving the severance pay to which he is entitled, the employee's seniority rights shall terminate.

ARTICLE XI - VACATIONS:

1. Employees shall receive vacations with pay, in accordance with the following schedule:

One (1) week after one hundred (100) days of employment;

Two (2) weeks after one hundred and fifty (150) days of employment;

Three (3) weeks after ten (10) years of employment;

Three (3) weeks and one (1) day after sixteen (16) years of employment;

Three (3) weeks and two (2) days after seventeen (17) years of employment;

Three (3) weeks and three (3) days after eighteen (18) years of employment;

Three (3) weeks and four (4) days after nineteen (19) years of employment;

Four (4) weeks after twenty (20) years of employment.

Vacations for those receiving three (3) weeks or more shall be granted to an employee in the calendar year in which he completes his tenth (10th) or more year of employment.

An employee, who does not qualify for vacation in accordance with the above schedule, shall be granted one (1) day's paid vacation for each twenty (20) days of employment.

Employment with predecessors in interest shall be computed to determine vacation benefits.

2. In no event shall an employee who has worked for the Employer for one (1) year or more receive less than two (2) weeks' vacation with pay.

3. Employees shall be paid for vacation in advance, and those entitled to more than one (1) week shall be granted consecutive weeks.

4. Holidays and sick leave shall be counted as days worked for vacation benefits. Employees shall select vacations in accordance with their seniority. Time for vacations shall be mutually agreed upon.

5. An employee, having at least ten (10) years of service, who becomes disabled and is unable to work, shall receive vacation pay for the period of one (1) year following such disability.

ARTICLE XII - SICK LEAVE:

1. Employees who are steadily employed throughout the contract year, or who at the beginning of the contract year have completed one (1) or more years of service, shall be granted seven (7) days' sick leave per contract year with pay. Other employees shall receive one (1) days' sick leave credit for each calendar month of employment, not exceeding, however, five (5) days in the contract year, and shall not be eligible for paid sick leave until thirty (30) calendar days after they shall have commenced work for the Employer.

2. An employee who is sick shall call the Employer before the commencement of his day's work to inform him of his sickness and shall, if on sick leave, notify the Employer the day before his return to work of his intention to return to work.

3. Employees entitled to seven (7) days' sick leave during the contract year, who have not used any or all of the seven (7) days' sick leave, shall be paid for any unused portion thereof, at the end of the contract year. Employees entitled to less than seven (7) days' sick leave in a contract year under this Article shall be paid for the unused portion of their sick leave at the end of their employment.

ARTICLE XIII - LEAVE OF ABSENCE FOR DEATH IN FAMILY:

1. The Employer shall grant three (3) calendar days off, without loss of pay, to an employee who has a death in his immediate family, inclusive of the day of the funeral. Immediate family shall include parents, foster parents, grandparents, spouse, children, sisters and brothers. In the event of the death of a father-in-law or mother-in-law, the employee shall be allowed the day of the funeral without loss of pay, provided he attends the funeral.

ARTICLE XIV - WELFARE FUND:

1. The Employer shall contribute a sum equal to seventy-five (75¢) cents per hour for each hour worked, not exceeding forty (40) hours per week, by each employee covered by this Agreement to the Trustees of the Westchester Teamsters Health and Welfare Fund, heretofore designated by the parties for the purpose of securing medical and social benefits for employees. In the event, however, that the law shall be changed and permit such action, the Employer shall pay such sums to the Union to be administered by it for the purposes for which the Westchester Teamsters Health and Welfare Fund is established.

2. The Employer shall remit and pay over such sums not later than the tenth (10th) day of the current month for the preceding month's payroll.

3. The Employer shall post a performance bond in an amount equal to six (6) times the average monthly contribution payable by it to such Fund. The Trustees of the Fund, however, are empowered to waive the posting of such bond in the event the Employer's record of payments -- in the opinion of the Trustees -- justifies such consideration.

4. Holidays, sick leave and vacations shall be considered hours worked for the purpose of this Article.

ARTICLE XV - NEW YORK STATE DISABILITY BENEFITS LAW (ARTICLE 9 OF THE NEW YORK STATE WORKMEN'S COMPENSATION LAW):

1. The benefits afforded by the New York State Disability Benefits Law are presently covered under the Westchester Teamsters Health and Welfare Fund; that coverage will be terminated as of December 31, 1976. The Employer will procure coverage under the New York State Disability Benefits Law for all of its employees subject to this Agreement to become effective as of January 1, 1977. The cost of that coverage will be borne by the Employer and his employees in the amounts specified for each of them by the New York State Disability Benefit statute.

ARTICLE XVI - SUPPLEMENTAL UNEMPLOYMENT COMPENSATION PLAN:

1. Effective July 1, 1976, the Employer shall pay monthly to the Trustees of the Westchester Teamsters Health and Welfare Fund a sum equal to fifteen (15¢) cents an hour for each hour worked by each employee covered by this Agreement; effective October 1, 1976; the aforesaid contribution shall be increased from fifteen (15¢) cents to twenty-five (25¢) cents for each hour so worked. Holiday pay and vacation pay hereunder shall be considered as if the hours paid for such benefits were "hours worked" for the purpose of contributions to the S U B Plan hereinafter mentioned.

2. The said contributions shall be held in escrow by the Trustees in an interest bearing New York savings bank account or accounts under a designation indicating that the funds are an escrow trust; the escrow funds shall be transferred to the Trustees of the Supplemental Unemployment Compensation Plan (hereinafter known as the S U B Plan), to be established by the Trustees of the Westchester Teamsters Health and Welfare Fund when that Fund has been established as a United States Treasury qualified trust.

3. The Trustees of the Westchester Teamsters Health and Welfare Fund are hereby authorized to have their attorneys prepare a Plan (including a separate trust agreement as part of the Plan documentation), which shall contain such terms and provisions as the said Trustees deem appropriate, including, without limitation, such matters as the time for the commencement of benefits, and the maximum number of weeks of entitlement to benefits. The Plan shall also grant full authority to its Trustees to amend any of its provisions from time to time, provided only that nothing in the Plan as originally adopted or as amended shall permit the assets of the S U B Plan to be diverted to, or applied to, any purpose except supplemental unemployment compensation benefits for the employees of contributing Employers to the Plan; and the reasonable expenses of its administration.

4. After the S U B Plan has been adopted by the Trustees of the Westchester Teamsters Health and Welfare Plan, such Trustees and their successors in the trust shall serve as the trustees of the S U B Plan.

5. The format and terms of the S U B Plan shall conform to the requirements of the Taft-Hartley Law for such a plan at all times; and a ruling shall be obtained by the Trustees that the contributions are tax deductible by the Employer and that the Plan qualifies for approval by the United States Internal Revenue Service so that its Employer contributions and income are exempt from Federal income taxes.

6. The Employer shall post a performance bond in an amount equal to six (6) times the average monthly contribution payable by it to such Fund. The Trustees of the Fund, however, are empowered to waive the posting of such bond in the event the Employer's record of payments -- in the opinion of the Trustees -- justifies such consideration.

ARTICLE XVII - PENSION:

1. The Employer shall pay monthly a sum equivalent to seventy (70¢) cents per hour for each hour worked by each employee, not in excess of forty (40) hours per week, to the Trustees of the Westchester Teamsters Pension Fund.

2. The contributions provided for hereunder shall continue so long as the Pension Fund previously established continues to qualify for approval by the United States Internal Revenue Service.

3. The Pension Plan shall provide that employees must retire upon reaching sixty-five (65) years of age.

4. The Employer shall post a performance bond in an amount equal to six (6) times the average monthly contribution payable to such Fund. The Trustees of the Fund, however, are empowered to waive the posting of such bond in the event the Employer's record of payments -- in the opinion of the Trustees -- justifies such consideration.

5. Holidays, sick leave and vacations shall be considered hours worked for the purpose of this Article.

ARTICLE XVIII - INDIVIDUAL CONTRACTS:

1. The Employer shall not make any contract with an individual employee, nor shall the Employer attempt to enter into such a contract with an employee.

ARTICLE XIX - OUTSIDE CONTRACTS:

1. The Employer shall not, during the term of this Agreement, contract or agree to contract, or otherwise assign, work performed by employees covered by this Agreement to any other firm, contractor, corporation, partnership, individual or otherwise, except as provided by Article VI hereof. It is agreed that employees covered by this Agreement shall continue to do all types of work heretofore performed by them.

ARTICLE XX - STRUCK WORK:

1. It shall not be a breach of this contract nor cause for discharge, or other discipline, for any employee to refuse to cross a primary picket line.

ARTICLE XXI - PAST BENEFITS:

1. The Employer shall continue during the term of this Agreement any benefit or condition of work more favorable than those contained herein.

ARTICLE XXII - NON-DISCRIMINATION CLAUSE:

1. The Employer and the Union agree not to discriminate against any individual with respect to hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, national origin or age (between the years of 40 and 65), nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of race, color, religion, sex, national origin or age (between the years of 40 and 65).

2. The Employer and the Union agree that there will be no discrimination by the Employer or the Union against any employee because of his or her membership in the Union or because of any employee's lawful activity and/or support of the Union.

ARTICLE XXIII - DURATION OF AGREEMENT:

1. This Agreement shall take effect as of the first day of July, 1976, and shall expire on the 30th day of June, 1977.

2. This Agreement shall be binding upon the parties, their successors and assigns, by operation of law or contract.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective officers and their respective seals to be hereunto affixed.

EMPLOYER _____

BY: _____

UNION:

Local 456, Teamsters and Chauffeurs Union, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

BY: _____